IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER

NO 1:CV-01-0084

FILED HARRISBURG, PA

MAY

£ 0 2002

Plaintiff

CIVIL ACTION LAW E. A ANDREA, CLERK

PAUL EVANKO, MARK

CAMPBELL, THOMAS COURY

JOSEPH WESTCOTT.

HAWTHORNE CONLEY.

JOANNA REYNOLDS AND

SYNDI GUIDO.

(JUDGE CALDWELL)

JURY TRIAL DEMANDED

Defendants

PLAINTIFF'S ADDENDUM TO EXHIBITS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT- DEPOSITION TESTIMONY Volume III

- 1.) Deposition of Paul Evanko
- 2.) Deposition of Ralph Kush
- 3.) Deposition of Michael Soohy
- 4.) Deposition of Darrell G. Ober (Day 1)
- 5.) Deposition of Darrell G. Ober (Day 2)
- 6.) Deposition of Thomas Coury (Day 1)
- 7.) Deposition of Thomas Coury (Day 2)
- 8.) Deposition of Joseph Westcott
- 9.) Deposition of Marie Marshall

- 10.) Deposition of Thomas Williams
- 11.) Deposition of Mark Campbell
- 12.) Deposition of Larry Riley
- 13.) Deposition of Francis Koselnak
- 14.) Deposition of Walter Margeson
- 15.) Deposition of Mark Grab
- 16.) Deposition of Mary Bungo
- 17.) Deposition of William McAlreavy
- 18.) Deposition of John Pudliner
- 19.) Deposition of John (Rick) Brown
- 20.) Deposition of Mark Carr
- 21.) Deposition of Robert Werts
- 22.) Deposition of Robert Hickes
- 23.) Deposition of Hawthorne Conley
- 24.) Deposition of R. Dane Merryman

25.) Deposition of Charles Skurkis

Respectfully Submitted.

Harrisburg, PA 17110

(717) 221-9500

DARRELL G. OBER NO. 1:CV-01-0084 Plaintiff (JUDGE CALDWELL) VS

PAUL EVANKO, MARK CAMPBELL. THOMAS COURY, HAWTHORNE CONLEY

JURY TRIAL DEMANDED

Defendants)

PROCEEDINGS:

Video Deposition of Marie Marshall

PLACE:

Law Office of Don Bailey 4311 n. 6TH Street Harrisburg, PA 17110

DATE::

March 6, 2002

APPEARANCES:

For the Plaintiff

Don Bailey, Esquire 4311 N. 6th Street Harrisburg, PA 17110

For the Defendants

Joanna Reynolds, Esquire Barbara Christi, Esquire 1800 Elmerton Avenue Harrisburg, PA 17110

BAILEY: Thank you Marie is it alright to address you as

2 Marie?

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3 WITNESS: That's fine.

BAILEY: Marie as I indicated my name is Don Bailey I am 4 attorney and I represent Darrell here a law suit that you may heard 5 6 something about. The captioned was read let me read the whole caption to you so you understand. Darrell G. Ober plaintiff vs. Paul

Evanko, Mark Campbell a gentlemen in the Governors office. Thomas Coury, Joseph Westcott, Hawthorne Conley and this lawsuit

has to do with some events that occurred in various places in the 10

Pennsylvania State Police organization and you're a fact witness in

this case. We want you to feel as relaxed as possible unlike the stuff 12

you see on TV no ones gonna be jumping up and down or trying to

distort your words or anything like that I try to make people feel as 14

comfortable as possible. It's a video deposition and you can come in

by the way and view your video deposition at will. The attorneys here

17 will be acquiring a copy it so your access to it through them also. I'm

going to assume your represented by opposing counsel they may have

not spoken to you about that or you may not - I'm going to assume 19

that and conduct myself in that way. It really shouldn't effect you very

much. One thing I want you to feel comfortable about in particular if 21 22

you don't understand a question that I ask or if you even if your just curious internally about where I'm going or what I'm trying to get at 23

with the question. If it makes you feel better or make you feel more

VIDEO OPERATOR: Good Afternoon Ladies and

Gentleman please be advised that the Video and Audio is in operation

it is 12:03 p.m. March 6, 2002. My name is Tony Marceca and my

address is 2219 Divie Drive, York Pennsylvania 17402. I have been

contracted my P.R. Video to be the operator in this case. The case is

in the United States District Court for the Middle District of

Pennsylvania its caption is Darrell G. Ober the plaintiff vs. Paul

Evanko et. al. 1:CV-01-0084. This deposition is being held at the law

office of Mr. Don Bailey at 4311 N. 6th Street, Harrisburg,

Pennsylvania 17110. And the time is now 12:04 p.m., and with the

witness Miss Marie Marshall please raise your right hand? Do you

swear to tell the truth the whole truth so help you God?

WITNESS: I do.

MARCECA: 14 Thank you. Mr. Bailey can we have a sound

15 check please around the room?

16 BAILEY: Yes my name is Don Bailey I 'm an attorney and I represent the plaintiff Darrell G. Ober and if the opposing counsel can

identify themselves for the record please. 18

19 REYNOLDS: My name is Joanna Reynolds and I am

20 assistant counsel with the State Police and I represent the defendant in

this matter. My address is 1800 Elmerton Avenue, Harrisburg, 21

Pennsylvania 17110. My phone number is (717) 783-5516. 22

CHRISTY: My name is Barbara Christi, Chief Counsel with 23

the Pennsylvania State Police and my address and phone number are

those given my Assistant Counsel Reynolds.

comfortable you please feel free what I'm asking by the question and

what I'm trying to get at. Okay.

WITNESS: Okay.

BAILEY: I'm not interested in playing games with facts or

information here. We want to give you a complete opportunity to

answer fully and completely and of course it goes without saying

there no issue here that has anything to do with any implication that

you've done something wrong or some how a target or something. So

please don't - I sorta had a little vibe that you are alittle nervous. I

don't want you to feel that way. If at anytime you need a break or at

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anytime you want to stop or you want to talk to Joanna or Barbara you

just let me know. Okay and lastly we shouldn't be very long, 12

We're going to reserve all objections except 13 REYNOLDS: as to form? Usual Stipulations. 14

BAILEY: Yeah. From time to time one of the attorneys will 15

make an objection. You'll get a cue from Joanna or Barbara - you

know that's just attorneys doing the attorney thing that shouldn't 17

bother you. Yes, we agree to the usual stipulations. Okay with all that

mumbo jumbo being said, do you have any questions of me? 19

WITNESS: No not at this time.

21 BAILEY: One thing your alittle soft spoken.

WITNESS: I'm trying to speak up - that's what I said I took a

lozenger first to try to get my voice back.

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BAILEY: Well if you need water or you need a can of pop as we call it in Western Pennsylvania. Pll get you a can of soda or pop. Okay.

0: Marie how are you employed otherwards what do you do 4 and where do you work?

A: I work for the Pennsylvania State Police Bureau of Research and Development Programming Division.

Okay can you briefly described your duties there?

Well are office is primarily responsible for reviewing regulations and directives to get them ready for Commissioners signature or the Deputies. So my process sometimes is reviewing those documents to get them ready for a final signing.

Before you came in hear today did you review any of the materials or go over anything in anticipation of this deposition.

No I don't know what to review.

O: Okay. Whose you immediate supervisor?

My immediate supervisor is Pam Yamrich. A:

0: Okay who is Pam's immediate supervisor?

Well right now its Sergeant Margeson whose are acting division director. But it would normally be lieutenant Thurston.

Now research and development you indicated that you review directives and that sort of thing, or review proposed regulations.

A: That's right.

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How does that process work?

As part of that process do you review with legal from Q: time to time. 2

A: I wouldn't do that the project person maybe involved or Sergeant Margeson but that's not my involvement.

> If a new regulation is drafted. Is it reviewed by legal? Q:

Sometimes. A:

0: Okay. What situations could you describe for me when a new regulation would be drafted and it wouldn't be review by legal?

9 Well for example we had a rush special order this morning that we had to go through and it had to be out to be process 10

and that would go through the normal procedure after my review and it would go up through the chain of command, and the Bureau

secretary would look at it, and the Major, and then it would be taken 13

up front, it wouldn't go through legal. Because they felt it didn't 14

involve legal and if that was okay then it would be sign and 15

sometimes the front office might make that call they may feel that 16

17 legal needs to look at this?

BAILEY: They need an opinion on this,

Yes and sometimes that happens that way.

20 Well one thing that probable that won't happen is that there's wouldn't be a major change in a regulation without the front 21 22 office signing off on it.

That's correct.

You want from the beginning?

O: Yeah I don't want to spend a lot of time at it. But just

give us an idea of the structure of how it works.

Okay. For example maybe another office Bureau would submit a proposed suggestion or a special order that we would review

so they would send it through are right now through our e-mail system or it could be on a hard copy and it would come in to our office it

would check it in and turned over to Sergeant Margeson and he would

assign it a project number. That project number he would then give it

to one of his project people and that would be there project. And then

they would work with the originator whoever the other Bureau office

would be, whether it's BCI and Drug Law or the front office who

ever it may be, so that project person is responsible for getting that

project ready making all contacts making sure they have all the

information. They do there actually work on the computer with that project, and once they feel its ready for at least a first draft then they 16

will submit it to Pam or myself. Right now their giving it Pam and her

and I are both doing this. And we both review the process. 18

19 So if somebody comes up with an idea and they think its worthy of you know some area Commander out there comes up with 20

21 an idea on how a regulation should be changed or how there should be 22 a new regulation and they write up that idea and they submit it. What

you folks do is try to look at it in terms of putting it into the proper

form and getting it into regulation language. 24

That's correct.

BAILEY: Absolutely not. So where not going to change a major regulation of the PSP unless the front office gives its approval

right?

A: I've never seen that, Yes.

Q: Well have you seen it any other way?

A: No.

Q: Alright whose in the front office?

Well it may go to the Deputies, it may go to the

Commissioner for his signature but it would go through our Deputy if

its for the Commissioner. It would be Colonel Hickes or Deputy of 10

11 staff.

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Q: Okav

A: If it affects that field it would probable go through that

Deputy?

0: Okay. And who would that be?

Right now Wertz.

Okay. Well - is there some kind of form or some kind of Q:

sheet that tells you when its endorsed or okay. Whats that called? 18 Routing project - routing log sheet. It's a form that

everyone one of else that reviewed that would sign off on that. 20

You would sign it for the Commissioner? A:

No no theirs a place for me to sign off that I reviewed it. No I would not sign it for the Commissioner that's only for the 23

Commissioner or his. 24

Only the Commissioner signs for the Commissioner.

- Right. Or for who he has designated it to.
- If he tells somebody to sign for him I don't know. The
- Commissioner is the Commissioner. He is the head of the
- organization right?

Q:

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- A: That's right sir.
- So if you got a routing slip in there and that routing slip says Commissioner whats that mean whether its checked or signed?
- Well there are some regulations that he may not have
- seen because he has given the authority with his Deputies that he feels it may not be a major policy issue. Like I refer it Directives as 10 17
 - special orders there supposedly temporary directives.
 - That would be signed by the Commissioner.

Right. What about a regulation about regulation 1?

- Well does the Commissioners secretary have the 14 O: authority to sign for him? 15
 - A: I don't know sir.
 - Only the Commissioner would know that? Q:
 - A:
- Is it possible for the Commissioner to sign off on a 19 0: 20 regulation and at the same time to have a signature from legal?
 - I'm not sure what your asking. ۸.
 - No No either am I. Let me go back to the beginning and try again. There's nothing that you know of in PSP practice and regulation which requires the legal department review and approve it
- is that fair to say? 25

- regulations started whether it was just a AR1. If your using that AR1
- what ever regulation you want to talk about, if it comes in a hard copy
- that should be in that file the way it originated and then you have the
- process on the way people were working on it and there's a project
- tracking log to show that if they had meetings regarding any issues
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- that may have come up during that life of that project. That is to be included in there.
 - 0: Does every regulation have a historic file?
- A: Yes it does.

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- And if I go to every historic file and I looked at each one each one would have an entry posted to the historic file. That would include the regulation - I'm gonna ask you about subsection?
 - A: About proposed?
- No no not proposed. It would have the regulation posted in the file. For example. Let me give you an example. Lets pretend theirs a regulation 4. Regulation 4 became a regulation some how some way some time, and its going to have an historic file. Theirs no such thing as a regulation without an Historic file or is there?
- Unless its brand new. Unless its brand new regulation that's never been - if its just being created. But it would start with this as soon as this project started that is the history of that file.
- Yeah and at some point if that regulation were accepted or approved by the Commissioner then it would have an effective date right?
 - That's correct.

- Yes I believe your right there.
- But certainly that would be the prerogative of the 0:
- Commissioner. Right?
- Yes. I would examine the Commissioner or Deputy who A: is reviewing it.
- Q: But the routing slip might not indicate that legal has been
- consulted. In other words the routing slip is something that has
- something to do with PSP structure and indicate who signed off on it.
- And its not common for it to reflect legal on it. Is it or isn't it?
- Do you mean is Chief counsel on every routing slip? Is A: that what your asking?
- 0: Yeah some.
 - A: No I would say theirs some that there not on there.
- And some that there are.
 - A:

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- Alright that's the approval process right that where 17 talking about.
- 19 A:
 - Q: Is there a thing called a historic file?
- 21 Yes there is A:
 - And what is that?
- That is the project when it is completed after it has all its 23
- signatures, any comments made from anyone who may have reviewed that in the process. The historical file is included with the way the
 - - 10
 - Q: And that would be posted to the file?
 - A:
- Okay. Now if you got a regulation and theirs a copy of Q:
- the regulation if its exist in the historic file, lets say its been 20 years
- old this regulation. And there's a proposal to change it and its assign a
- project number then that historic data is added to the existing historic
- file correct?
 - A: Okay let me see if I understand your question. If a
- regulation is 20 years old and your thinking that a project file would
- have that 20 years old regulation as well as this new one in that folder
- 11 is that what your asking?
 - Q:
- If there hasn't been any changes to that sometimes there's some parts of that sub sections are revised and we try to keep
- what was in that historic file what was in effective at that time before it got signed.
- Well there a question here about are you familiar with the issue that's been raised in this case about subsection C AR1.102 subsection C am I correct on my number?
 - A: No I don't' know.

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- 21 Okay do you remember any project to correct AR1.102.
 - I wouldn't know exactly because when I see a project
- you know sometimes I don't see every project that comes through I
- couldn't tell you what sections, because we see a lot of regulations

and I mean if it was in that file, and it was done but I can't say yes it was changed and what was in effect prior to that.

And in that's the reason why you keep a historic file because there so much work and so many different projects and if you don't' keep it to according to some structure its not going to mean anything because you don't run around with these things in your head that's what the files are for.

To try and give a history of the project.

O: When there changed right,

Yes. A:

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O: When the last effective date on regulation is. In this case 11 I may be mistaken I remember in my mind sometime around July of 12 1997 I think it was is when the last time when this AR1. This 13 particularly section at least when it had been changed its last effective date. And in our law suit its something that crops up according to 15 documents that we have this regulation had a regulation effective 16 February 2001. And I'm just wondering if you look in the historic file 17 if you going to find a copy of the regulation as it exist. 18

> You mean prior to this last change? A:

0: Should be part of the file?

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Absolutely and if there's a change its gonna be right up there in the corner right up there in the northeast corner isn't it Marie right up there in the corner?

- Can you tell me if I go on my little old West law out here in my computer and pull up my soft ware and pull up the State Police regulations?
 - A: I think you can.
- I do to. And if I told you that I think I can do that in right smack dab on that little research project and a date will show up and it will tell me the effective date of that regulation and that sort of thing?
 - Α:
- Okay. Now on the state police electronically kepted information. Is the historic files proposed revisions and change are they kepted on the electronic form in an electronic form?
- After its been signed each stage if I can understand A: your question.
- Let me make it easier for you. We have AR1 the biggie that's your main Bible I guess pretty much close to it organizational AR1 is that fair to say.
- A: One of our regulations.
 - O: To you that's not fair to say, Okay,
- That's just one of the regulations. A: 20
 - Yes Mam. AR1 AR1. Now there is a change in AR1, which takes place February 23, 2001. Okay that may have not been the right date but its somewhere in there. Lets say there a date at that time okay. If I consult the historic file that historic file should give

me the date of the latest revisions to ARI, and what the date of the last

Right there a date there should be a date on the regulation when it was last singed and the new date. Okay I certainly it makes sense to me. Now I want to ask

you some questions I'm gonna switch gears here now ask you how historic files are handles how there kepted how there accessed and

who has the authority to look at them, Okay. So let me start - in other

wards where talking about how those files are physically kepted and

who can look at them and if theirs records of who looked at them and

all those kinds of things. So lets start and talk about AR1 because I'm

interested in AR1.02 subsection C which I believe has an effective

date sometime around February 23, of 2001. I want to ask questions

about how somebody would come to look at and study and deal with

that file. Okay. Lets take the historic file itself, first of all is it kepted electro magnetically, or hard copy on paper is it kepted it both ways.

How is a historic file kept over there in the PSP police? What form is

it in? 16 A: Well right now where undaring where making electronic 17

library for historic files and I think that's been started I'm not 19 ad in that step my supervisor Pam Yagurich is I think that's been kepted up last several years. We also had a copy in the computer 20

of the regulation hen it was signed lets say 3 years ago that is in the 21

computer and then if somebody makes a change in that there to start from there first unless it's a compete rewrite.

Q: Are you familiar with West Law?

1: Yeah.

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revisions to ARI. In otherwards if I look at the effective dates of the regulations through time it should show a history of when it was

revised and when it was changed in the last effective date right?

A:

0: Now if I get on my little old West Mate and I access that information I can't go in and change your data can I?

A:

And do you give out the historic file can it be removed?

The only time that it would be done if there would be a request and we would log it out and most of the time its copies made, 10

11 if somebody ask for something you know there copies made. There

are times when somebody may say I need the file and nobody has said to me no Marie you can't release that file. 13

Okay lets talk about that alittle bit. If the Commissioner or if a high ranking state police officer wanted to see that file historic file do they have access to that file. Is that fair to say?

> A: Yes.

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If I'm a trooper with the PSP I'm not saying I can go up to RD and take that Historic file out of there, but I have access to it and I'm allowed to see it. Is that fair to say? 20

What if I'm a member of the public and I want to go out and I call you up Marie I want to make and appointment I'm an attorney and I want to look at this file. Can I go out and review it and see it?

Um. I wouldn't let anyone from the outside look at that without talking to someone.

Without getting some authority. O:

Someone would have to authorize that.

5 O: Has that ever happened that someone has come out to

look at a historic file?

Not that I'm aware of. A:

How many years you been there? Q:

۸: You mean at RD?

10 0: Yeah.

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Probably about 14 years. A:

12 Q: And in 14 years nobody has ever asked to see a Historic 13 file on a regulation?

14 A: From the general public?

> From the general public? 0:

I don't trust my memory that long, I won't say it's never 16 A: been but I don't know of anybody ever asking me. 17

Alright. O:

19 They wouldn't have to - they could have asked the

Director or whoever was in charge there at that time. 20

Okay but certainly if a member of the State Police 21 wanted to see it they could see it. 22

23 A:

> 0: You know of any situation where legal department within the PSP has signed out, logged out a historic file?

to look at the Historic file driving down the road God for bid my car

gets stuck in a snow back and somehow the file gets water damaged 2

and the file gets destroyed or loss the car catches fire - I don't know. 3

The files lost. Is the file recorded somewhere? Does it exist anywhere

else? 5

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A: The hard copy all the things that are in that historic file.

7 Q: Let's start there. The hard copy and all the things that are in it. Would it exist anywhere else?

It may not if nobody copied it.

Okay. But if its an AR1 its gonna exist on a hard copies 10 11 because its out there at the State police somewhere. Correct.

Correct. It would exist from what was in effect before and whats just been signed.

And its gonna be out there until its revised or changes and once its revised and changed according to protocol then its changed and then its distributed.

A: Yeah

Sometimes the changes are in part and sometime you reprint the whole thing if it changes its loosely isn't it?

> That's correct. A:

Okay. And the records in the historic file would indicate when distribution is made is that correct? 22

Yes. There would be a re-pro completed for that project and it would be taken down to reproduction to reproduce and that

would be on there and that would no when it was done. And the

A: Yes.

0: And would the record with the historic file indicate when

it was consulted?

A:

0: And by who?

> A: Yes.

0: And how long? All things being equal.

A: Hopefully.

Q: Hopefully,

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Q: Now that's a matter of practice with the State Police

12 that's the way things have been done.

We try to keep. I'm very, I take the Historical files very

seriously. And if I know somebody has it I like to log that somewhere 14

where they're somewhere. If I reviewed it and I filed it away - most

of the time somebody will come to me or they'll come to Pam to get 16

that but I know who has access most of the time. 17

Well is it possible to take that file out of there without 0:

you knowing? 19

> A: Are you talking about now?

No. I'm talking about a year ago? 21

A: Yeah could be

Could be. Now if I take the file out of there out of the 23

24 Historic file and lets say I lost it flat out lost it - accident. I was

driving down the road and say I am Commissioner Evanko and I want

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project person would pick that up and know then when it is

distributed.

How long does the distribution process take? Q:

From where. Do you mean from when the reproduction is

taken down stairs or from the beginning of the project?

No good question. The Commissioner signs it and says

its okay. A little routing slip indicates that the Commissioner signs it, its okay. A little routing slip that indicates that he's approved it what

ever he does to it. But let's say its ol ay. The routing slip is carried

back down to you folks then that ror ing slip?

Ŀ A: That's correct it's brou ht back to us.

Q: And what happens nex? 13

Then it would go to Sergeant Margeson and he would check

next. Beca seets to see what change number would be in effect is

sheet and number all done by change regulations, and a changed

then it would be give and the would assign the next number and 17

in and then I would type the re-pro and go 18

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into the electronic version and that would be supported by the date on and all that would be printed out and a re-pro would be made to copy and it would be given

back to the project person whoeve that project person may be, and 21

they would hand carried it down. So at would be like 2 days that

could be downstairs to re-pro. It could gether deickly it may take

longer depending on how many reproduction requests we may have if that's a priority or not.

- And when is it distributed from there. When does legal get their copy?
- Okay reproduction makes their copies and then they call 3 upstairs to say it's completed. They'll call the project person and he will go down he'll pick up his copy and review it to make sure that there are no mistakes on it and all the pages are there and then he hand carries it to the mailroom and from there its distributed. The mailroom does the distribution. They have a distribution table that they go by to
 - Q: Now let's say this thing is change but the Commissioner signs it over February 23. Okay. There's gonna be a document in that historic file, or there better be or hopefully there will be TU guess it would indicate when that thing got down there to the Commissioners office right?

distribute to all the Bureau offices, and troops.

- 15 A: Yes it would be on the routing slip when it came back 16 from the Commissioners office. Is that what your asking,
 - O:
 - A: Yes there a date usually that somebody signs it back in that it came back from the front office.
 - O: Okay and you have those records do you?
- 21 A:

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- Who keeps them Pam or you. O:
- A: No that would be in the historical file.
- Okay. Now when that comes back your telling me that's Q: 24 when it goes to Sergeant Margeson.

- from the Commissioner. After the Commissioner signs off on it by the way, unless he directs otherwise it goes back down to Mr. Margeson for his review, right,
- Well he doesn't really review it all he does is give it a number. He doesn't to my knowledge he doesn't review it once it 5 6 comes back from down there.
- Q: Lets be hypothetical it comes down from the Commissioners office on the 23rd. Let's say it gets there that day. Technically I guess it could happen that Mr. Margeson would give it a number that day. Right. 10
- A: Could. 11
 - Could. So lets assume it got a number that day. Let's follow this through. Did you ever see this little thing on with kids they do on how to make a bill; it's really a neat thing. Legislative process lets follow it through if we can okay. It comes back he gives it to Mr. Margeson he gives it a number now lets say that happens in one day. Lets say there a desire to get this thing done lickity spilt we want to make sure its done right away. So lets make sure it's done. Now he gives it a number and that goes to you and you use a sort of short nice
- 19
- term for something I don't pro something. What is that? Well let's do
- it this way. He brings you that change sheet sent to you. What do you 21 fill out? 22
- 23 A: A reproduction.
 - A repro. Okay.

- Yeah just to give it a change sheet number, he's the one that signs the numbers so we don't get them out of sequence and that type of thing.
- O: And whats the purpose of that change? What did you call it a change sheet number?
- A: A change sheet that how that's our numeric system. It you have a change to AR11, well let me rephrase that. If you had a change to AR all the AR's run consecondly by change sheets what I'm saying is AR1 doesn't have a certain series of numbers AR12 another one the AR1 is done by change sheets and done consecondley in order the 10 next change is 895 the next change is gonna by 896.
- And that's done to track and keep a calendar sequence 12 13 when changes take place.
- 14 A: That done to track.
- And to keep a calendar sequence when changes take 15 Q: place. I would assume the reason thats done. Because if you have conflicting things sometimes or different things going on change 17 different parts of a regulation unless you know the calendar sequence 10 it's gonna be hard to deal with subsequtive when those changes took or how to integrate them into the regulation. Isn't that fair to say.
- A: That's.
 - 0: There's a good reason for it.
- A: Oh sure.
- O: Absolutely. Now okay. So its February 23 there going to be something to indicate when that document get to the front office

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- Now what is that, that's only part of the process first of all I would go into the electronic version of that regulation and out the header on which, I called given the index number AR11 and that date if it was February 23. And it would have that date on it. It should have that date and all pages of that regulation if the whole thing was
- revised.

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- Q: Or if it was a page subsection C that was an addition and not a change that would be there.
 - I'm not sure what you're talking about.
- 10 I know what happened in this case naturally you know well AR1.102 there was a subsection C added apparently it had subsections A and B before and there wasn't a change there was an 12 addition and it had to do with a change of command. 13
 - A: Oh okay.
- There wasn't a revision is this particular change to any 15 existing thing there was an add on.
 - Okay. A:
- That's the scenario, as I understand it.
 - ۸: Okay.
- 20 So lets say somehow somebody is really interested in this 21 thing and they hand carry it down on February 23 goes to the good
- Sergeant and he gives it a number it comes to you and on the 23rd all 22
- this stuff could be done. You do the repro.
- Could possibly happen that way yes.

- Would you remember something happened like that if somebody hand carried that and pushing it through would you 2 remember that?
- Do I remember ever project no. A:
- 0: No mam
 - No. Would I remember that, no. A:
- O: Do you remember anything about Subsection C?
 - A:

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- Q: Now whats a repro?
- Its just a form that we have to go in and get ready for reproduction and that's what we use as a guideline and it has the contact persons name, and whoever the project person is and their phone number. And it would have the phone number and how many copies are needed. And we would say distribution AR because there a AR distribution and we would list it if there was a whole regulation that was revised, and we would list it item by item, page by page. Lets
- say there was a table of contents we would list the table of contents on 17 the reproduction, and there are blocks that are already on their that we 18
- 19
- would check off. And then once I would do that I would give it to 20 Pam and she would look at it, and she would initial off. And that's
- when she would put it in the electronic library. And then it would go 21
 - back to the the project person its just a form that we use.
 - Old electronic library. Now what would that repro form have on there as far as dates are concerned?

- I'm not asking you to agree with me. Is ARI does that mean to you. My understanding is that it is a major organizational.
- It is your organizational part of the AR. To me all the regulations are important.
- A: I'm sorry. I'm not trying to say that it's important anymore than any of the other ones. I wouldn't do that any different than any of the other ones.
- My question probably kind of implied that somehow it's the first among equals and I didn't mean that. What I was seeking in the question was that AR1 was certainly not some insignificant things, it's a major organizational after all its AR1 - just that number alone tells me something. It's AR1 it's a my understanding that looking at itits' a main organizational regulation that's what its about. I guess. The fact is when its changed or revised and you do the repro form you put on the date you try to make the date the same as the effective date but in any event its gonna be at least the date when that form is made up.
 - That's correct.
- Or possible some date in the future possibly. Is that fair to say. Would you do a repro form, put a date on it if you did it today, and a date on it from a week from now would you ever do that?
- A: I can't say that I would never have done that if someone said we want to use this date. For example for 2002 we wanted to make sure the AR12 is dated after the first of the year it may have come from the front office and ready to go. But this is a new process of the way we were doing our regulations the whole formatting. So we

- Most of the time we try to date that reproduction as the same date as I would put on that actual regulation.
- Okay so if I got this repro form, you try to date it Q: whatever that effective date of that revision or change would be.
- Right, whatever date that I went in and inserted in the computer on that regulation.
 - O: Right.
- Now sometimes it might be a different date but most of A: the time I always try to match those dates.
- Q: Now on that repro form lets say that repro form has the effective date 2-23-01. Would that repro form have a date on there for 11 12 the last time AR1.102 was?
- Α: No there a separate reproduction done for each revision or update for every regulation. 14
- 15 And that would have the new effective date on there though. I mean if doesn't matter what the regulation was before your 16 posting this latest revision or change.
- A: Right this is the latest one. If I was typing it in today, 18 today's date would be on there because this is a new history this is a 19 20 new project.
- 21 Q: New project, new change new revision whatever it might 22 be.
- 23 That's correct.
- Now AR1 is a major regulation. O:
- 25 Okay.

- wanted to make sure it was dated after January the 1, 2002. I may
- have received it a week prior to that and dated it for that reason
- because we wanted to make sure that it was dated after 2002 you
- know for a lot of reasons and can I say that it never happen. No theirs
- that's the only thing that I can think of right now.
 - Q: And I'm not implying by the way that it did.
 - Α:
- O: The point is though that the repro date or the effective date of the change or the revision is an important date? That's part of the history that begins the history that begins the new -
 - That's part of the file.
- Yeah. Alright. After you do the repro form where do you O: do take it then?
- A: There are two pages of the repro request, that is put in front of the actual regulation. After I print it from the computer and after I put the date. And I would give it to Pam Amrich who is my 16 supervisor. 17
- Okay where back on the record. Marie lets see if we can 18 break this down for you. 19
 - Okav.

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You responded that you said there were two forms to the 21 -. My understanding is those two pages whatever information there is there, appended to a copy of the new revision itself that's a proof copy 23 I imagine.

- A reproduction is just a single sheet. Okay yes it is 2 attached to the actual regulation.
- And the actual regulation that its attached to would be its - 3 new form that's gonna be printed up and distributed and am I correct?
- 5 That's correct. Getting it ready for a reproduction copy. That's correct.
 - What happens to it next. 0:
- Okay I would give it to Pam and she would enter it into the library. She would return it to the project person whoever that is. And that person would hand carry it down to reproduction. And they 10 would lay it on the desk of the Supervisor reproduction there. If it 11 wasn't time sensitive then they would just get to it when they got to it.
- 12 13 About how long does it take to get something printed up 14 any standard amount of time.
- A: It varies for every regulation that was very thick, or a 15 16 complete rewrite. I'm not remembering if that was a whole re-write of 17
 - 0: And I honestly don't know that,
 - A: It could take a while it depends on what other projects they have in reproduction. Usually we'll say to them when we have an item that is time sensitive this has to be done today and they do it quickly.
- 23 Q: Lets assume for the sake of argument that its time sensitive. 24
 - Okay.

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- historical file, they might not do that immediately because if it has
- been filed it may take time to go through that historical file. But lets
- say they were a good project person and stayed on top of it and kepted
- it organized they would have it ready to go. If they had other projects
- pending then they maybe wouldn't turn that in right away.
- O: How many project persons do you have?
- A: Maybe 9 maybe 9.
 - O: Can you name them for us?
- You mean the ones we have right now?
- O: Yes Mam. Well Marie name the ones that you had on or 10 11 about the first of last year 2001.
 - Well we just had a Corporal Todd Harmon, Corporal
- Fresner, Trooper Jack Reese, Corporal David Beard. I'm not sure if 13
- Trooper Clemens was there at that time I think he might be there. 14
- 15 Corporal McAreavy. I think your gonna . Corporal Todd Feria. I'm 16
 - That's fine. Alright it should indicate in the tracking log when the printing was done and when it was turned back over to RD.
 - A: That's correct
- Now does R D then take it over to the mailroom or do 20 they sorta say hey take it over the mailroom kind of thing. Like 2.1 directing the Sheriff to do it or do you take it over yourself? 22
- Well, it's my understanding it's the Project persons responsibility to take it over to the mailroom. If it's a large project 24

- Lets say this thing comes in the Commissioners office on
- February 23 and lets say the 23 or 24 its laying down there on the printers desk, and they have the capacity to reprint a large AR and get
- in done in a day.

copies.

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- A: I suppose if they had to they would.
- I mean there gonna try-
- A: They do what they have to do down there. There very good down there.
 - Q: Okay what happens next?
- Once its completed they would probably stack it and call the persons name on the reproduction who ever that project person H was that took it down and they would probably say your projects 12 completed. That person would go down pick up there repro master the 13 original one that went down should be the original master down there they would pick that up and they would make sure everything was 15 taken down to the mailroom. And the mailroom would distribute according to its distribution table. And they would have a group that would be for our Bureau for our section that would distribute our 18
 - 0: Okay. Now is there any record of that?
- 21 Yes they should have a project-tracking log that they logged out that it's completed. They would give it - sometimes this 22 process has changed but I think they would give it Duff and he would close out that project, because every project has a number. That 24 projects closed and you know if they had time to go through the
- may see a hard copy, they i say see what was in effect before and I'll go to the historical file and show them what was in effect before they
- won't physically look into to my knowledge. I've never had anybody
- ask me to go in and look at the electronic version. They look at a hard
- copy and say. Oh this is what was in effect this date to this date.
- Q: You have a little table and desk down there to read things or something?
 - Just one area, there's a conference room. A:
- Does legal ever come down and take the file out?
- They may have. 10 A:
- And there suppose to sign for it if they do? 0:
- A:

- Does it ever happen that they forget to sign?
- I really wouldn't know that. It could happen I guess but most of the time if they didn't file for it sign for it somebody would make a notation. I certainly would make a notation. But most of time it's a copy. They actually don't take the file they say can I have a copy of such and such and I would make a copy. 18
- Do you ever know them every taking the file physically 19 Q: 20. out of there?
- A: You mean that file or - any file. 22
- Any file. Do you no of any instance where legal 23 file out of RD?
 - I recall this the toen while back, I remember somebody asking for a copy of everything of that file.

they may push a cart maybe on a big cart. If it's a special project they may hand carry it, take it over and say this is ready to be distributed.

I'm not directly in that process, but thats the general procedure.

- And then it would be mailed out distributed? O:
- A:

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- 0: Now I'm going to assume, and you tell me if you know that the distribution of an AR change naturally on the distribution list is gonna be legal virtually the legal department on virtually on every change. I can't conceive of them not getting up dated copies of changes to regulations. Right?
- Right. Yes there upon distribution, whether it was given to them, its up to the mailroom they may have miss it or I assume every Bureau, every office, every troop, every area has a library and they should be receiving there AR's in this case.
 - Is there a record kepted on the distribution?
- Yes there's a distribution table. That was just recently revised, theirs always been a distribution table per say.
- Probable in the private sectors the outfit that maybe's refined the tracking system better than anybody I know of, is Federal Express. Now if Federal Express brings an item here there's a not only do they seek to get it signed, there a notation by the driver where he or she put it and what was done with it. On mail distribution do you know whether there is some notation?

- Now let me ask you this. I'm doing my research I want to look at a regulation and I want to look at AR1.102 whatever software you got out there I'm over out in troop A and I imagine there's some kind of computer system or internal network or maybe they use the Internet I don't know. But I come in and I access code whatever I do I come in and research that file. I can't get any information electronically about AR1.102 that RD doesn't post-up under that regulation am I correct?
- A: That's right my knowledge no one can get into the regulations to review it to read only or anything at this point.
- Q: Now Marie there's only two ways to access information. about AR1.102. I've either got to look at a existing hard copy somewhere or I can pull it up on my computer, and I can look to read what the latest posting to that file is? Correct? By RD.
- 15 A: I'm not sure if I understand. Where are you when you say I can look into this are you outside the Burero? 16 17
 - Q: I'm in Pennsylvania State Police legal. And I look in my files. I look in my hard copy and I want to see if there's any changes since my last posted hard copy, and my last posted hard copy says 1997 July 7, 1997 lets say it says that date. I'm not sure if it says that date. And I want to know if there's any changes and I look at my shelf and I haven't had any changes. We call them court opinions; we call them slip opinions. Okay there not yet published, but we can go in and get the latest opinions or pull them up on the computer when there posted. So if I don't have a hard copy change there then the only

- I wouldn't know that, because that involves another
- Bureau, and I'm not sure what process they have, that would be under
- Bureau staff services.
 - O: Who heads up that Bureau?
- Right not its Major Zinsky. A:
- O: Zinski or y.
- ۸:

- Q: Okay. At what stage does the, I think you answers this
- but what stage does the change get posted electronically?
- When I give it to Pam. Well when I say electronically
- that's just in our file, that's not open to anybody else at this point 11
 - That's just you guys down in RD.
- 13 Right. That's part of our historical record file, that's not distributed - nobody can access that from any Bureau or Troop that's just thats just for our Bureau, eventually will be, but not at this point.
- Do you understand what I'm saying?
 - Q: Yes Mam. I think I do. Now people outside RD can
- access the historical files, but they can't come in and change it?
- 19 No you asked that people outside the Bureau office can have access to the electronic version? No. It's only on our S drive for the Bureau at this point. 21
- Okay. And theirs no way any body from outside that 22 Bureau and come in and change. 23
- Not to my knowledge,

- place there the only place I can go to see if there's a later change is
- electronically go to RD and see whats in there right?
- They would come down and ask us they wouldn't do it A: electronically.
- Oh, they would come down. Q:
- A: They would come down and ask us for the file, because
- they don't access to anything only RD has it.
 - Would there be a record of that. O:
- Yes if it was logged in yes.
- What if it's wasn't? 0:
- Then there wouldn't be a record.
- That was a difficult one for me to figure out but I.
- 13 If someone ask me a lot of times Chief counsel will send
- something down by e-mail or correspondences or sometimes by phone
- call and request to see a file. It doesn't always just come through me. It may come through a Sergeant and he may assign a project person to
- do that. But they in turn get a project number and that's logged. 17 18
 - But do they come down?
 - Sometimes. A:
- They physically come down the lawyer's do? 20 Q:
 - A: Yes they do or the clerical staff.
- 22 Okay. Do they come in and sit in and look at that file Q: without writing their name down? 23
- Nobody's really look into the electronically version. I 24 don't know anybody whose looked into the electronic version, they

A: Yes.

Q: Did you charge twenty-five dollars an hour for labor?

A: I don't think so.

Q: Okay.

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A: That's part of my job.

Q: Well okay so somebody came down and they got a copy of that that's fairly recent. I'm going back to a year ago or so. You don't know and you don't remember any hullabaloo about AR1.

A: See I don't really. I am involved in reviewing it and passing it on I don't kind of get into it. Unless I'm personally involved in a meeting in which this case I wouldn't have been. I don't know any more specifics in this case. Sometimes its better in my position not to. When somebody asks for information and -

Q: Leo Toistoy would agree with you. He's the smartest person. Okay now if – the normal procedure would be however is someone's going to come down and look at that file and study it they may not come down and look at it they may not sign in or sign anything out there. But if they took the file it should be either signed out or but it wouldn't necessarily be logged in if somebody looked at it?

A: We have a log sheet now I know we do, that we have everybody sign in and out.

Q: When did that start?

A: Probably January,

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REYNOLDS: I'm going to object to the form of the question. I don't understand either.

BAILEY: Okay.

A: No I'll let you ask your question.

Q: In the historic file things I have been able to see and read
about the regulation has a date the last effective date it's printed right
on the face of the regulation in large clear numbers well over an
eighth of inch high in this comer of the document. That's what I've
seen I don't know if that's a standard format, and I'm going to ask
you about that next. But what I've seen that's where it's printed.

11 A: Yeah. That's done as a header alternating header and

13 Q: Yes mam the header and its standard practice the way
14 you do stuff?

A: Yes.

Q: Yes Mam. It's got a date on there. It's as plain as the
 nose on your face.

18 A: See I'm not sure I probably don't know if I should ask
19 this. I'm not sure what the question is about the file.

20 Q: Well.

A: Then maybe I don't need to know that. You know.

22 Q: It's not that germane the complaint that we in a nutshell.

23 A: Can I say something else.

Q: Sure.

Q: All litigation responds good and positive changes some way Marie. All right but if somebody comes down there and there gonna take a look at the file its possible that somebody is going to take a look at the file and then leave.

A: That's correct.

Q: Alright Now is you look at that file and I know this is a
silly question don't laugh at me. In most circumstances the last thing
in the file is that last entry. If the last entry in the historic file is AR1
the effective date of a change to the regulation that occurs on February
23, 2001 that's gonna by the last thing in the file, right?

A: You mean the final regulation?

Q: Yes.

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Correct.

14 Q: and somewhere in the file regardless of any proposed
15 change, pending ange, or even latest change is going to be the last
16 copy of the effective one of that regulation?

A: It should be in there that's correct.

A: I'm not sure if I understand.

Q: Well what excuse is there for missing it then?

A: Missing what?

Q: The date of the regulation? I mean the regulation got a
date 1997 its changed in 2001 how do you miss that. A date is a date
is a date it's printed right in the darn document isn't it. I've seen them

23 the date is printed right there.

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A: A historical file is as only as good as the person who did
that historical file. Do you know what I'm saying?

Q: Sure

A: Each project person has a responsibility to keep that up to date. Sometimes different project people are assign to a project if its been around for a while.

Q: Yes.

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A: And that happens. As far as what's in there, there should be what was in effect, if it hasn't been changed since 97 then 97 should be in there. What was signed should be in there. That's I don't know what else your asking.

Q: Really I don't think that has anything to do with that. The issue is that when the format that I've seen ultimately has got to be the to me the really basic question is the header issue. With the dates on there, that's all I just don't know how you could make a mistake on the dates on there that's all. I just don't know how you could make a mistake on an effective date and effective date on a regulation is a part of the regulation it's either in effect or it's not. And if that's a material issue in a case as it is here, then you look at the regulation in and you look at the date on that. How do you mistake that how do you confuse a 97 from and 01 I don't know. I think that's going to become a fact issue in this case. I'm trying to ascertain all be very honest with you

where just looking at who looked at the file and when we know when

the plaintiff looked at the file, and we have testimony on that. We don't know who went in and looked at the file. We have sanctions

- filed and all that kind of stuff, it serves me well. I want to find out
- what happened. That's all I'm asking about and if the historic file is
- accessed then I'm trying to find out the procedures that govern how
- you access the file when you look at it we know when Darrell Ober
- looked at it, and he can testify what he saw and I'm just asking about
- procedures when the file was looked at and I you've answered 99
- percent of those questions. I just have a couple more. Unless opposing
- counsel has any for you. The documents that say when somebody
- looks at a file or when a file is changed. Are the all kepted with the
- historic file? Let me tell you where I'm coming from. I'm trying to 10
- find out if there are separate records or documents that are kepted 11
- 12 physically apart from?

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- A: There may be.
- There may be. So.
- So now I know that the form is right in the file because I think its better that way. Because I can't remember what file somebody asked me three months ago did somebody look at 401.2 I don't know you get lots of requests. And I'm trying to ask the project people if they get signed a project from counsel from someone that they make sure the feel it out and make an extra copy so we have are
- Q: Alright. Aside from the historic file where might any documents indicating log in and log out functions.

- BAILEY: Are you saying that regulations that govern the
- ۸. She asked me an electronic version.
- Q: Yes

PSP are not available to the public?

- Now eventually where working on an electronic library now that everyone will have access to what is in effect.
- So if a citizen somewhere got onto Lexis or West Law, some type of you know there the State. For example my West Law I have access to Environmental Regulations and you know that public code, the administrative code, one of the - documents to man. But you don't really know if electronically they can be accessed or they can't be accessed as Joanna?
- A: I know they can't because there's no version anywhere but RD. No I'm sure of that.
- Q: So if I'm out at the Pennsylvania State Police headquarters and I'm in the legal department I can feel reasonable assured that opposing attorneys can't punch up on West Law or Lexis and get at those regulations. Right, I can feel pretty secure about that wouldn't I because there not out there right. Because I was wrong wasn't I.
- A: West Law there is. Not are internal regulations and directors not the West Law that's.
- Lets get this real clear okay. What Joanna's asking if I'm right, I want her to come back with some other questions and maybe lets get this cleared up okay. Your response to her questions if I

- There's a charge out sheet, a yellow charge out sheet that may have been filled out. That this historical file was pulled out
- and this person saw it on this date. If it was in the file.
 - Q: Thank you. Just give me 30 seconds.
- BAILEY: Marie at this time I don't have any questions.
- Opposing counsel may have some questions for you.
- REYNOLDS: Marie you indicated that I believe that during your testimony that the regulations, that is internal regulations
- of the State Police can be found on a system called West Law?
- A: No. He just asked if I was familiar with West Law. But 10 we don't have none of our regulations. All I know of is the State. Like
- the what is it Title 18, the Crimes Code, the Vehicle Code and those 12
- things, I'm sorry. I'm sorry if you misunderstood me. So internal regulations such as AR, FR, OM's special 14 order that may not be found on a publically access system?
 - A: No.

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- 17 They would only be available through hard copy presently to the Pennsyvlania State Police members.
- Correct plus it would be through are own share drive 19 20 under RD?
- They could get it electronically through RD but again it 21 would only be accessible by members and employees of the state 22 23 police.
- 24 A: Right
- 25 RENOLDS: That's all I have.
- understood you correctly that if I wanted to look at AR1 or in this case
- AR1.102 I would have to physically go out and look at a copy at the
- state police or have cooperation from RD to look at your electronic
- posting. Is that correct.

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- That's correct.
- Where I was in error, I apparently erroneously implied
- that if a got on West Law or Lexis that I could access these regulations
- and read them. And I'm in error right?
- Right. There for internal regulations. Not for PSP A: 10 regulations
- Q: So Joanna is correct. PSP lagal would have a copy of the regulations right there and they could be secure. And comfortable that
- Don Sniley couldn't get on his West Law and couldn't get on this
- Lexis or whatever he might have, or get on the State net, you know
- that little posting out there, or find PSP regulations like ARI.102
- because they men't there right. 16
- That's my understanding. 18
 - Okay I don't have any additional questions. MARCECA: Li's not 1:21 p.m. the 6th of March this
- deposition is now concluded:

IN THE UNITED STATE DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER

CIVIL ACTION LAW

Plaintiff

1: CV-01-0084

VS.,

(JUDGE CALDWELL)

PAUL EVANKO, MARK CAMPBELL, THOMAS COURY, JOSEPH WESTCOTT. HAWTHORNE CONLEY. JOANNA REYNOLDS and SYNDI GUIDO

JURY TRIAL DEMANDED

Defendants

Proceedings:

Video Deposition Thomas Williams

Date:

October 12, 2001

APPEARANCES:

For the Plaintiff.

Donald Bailey, Esquire 4311 North 6th Street Harrisburg, PA 17110

For the Defendants:

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Syndi Guido, Esquire 333 Market Street Harrisburg, PA 17101

you for that purpose. There also will be a transcript produced on the

audio that we get and that will be available either to your attorney

or to you at cost. And, that being said let me go into the technical

things that we're going to be doing here today. This is a deposition

as I had indicated in Federal Court. It's a Federal underlying case 5

here, in Federal Court, Civil matter. I'll be asking you questions and

you'll be responding to various questions as we go through this

thing. Just a few ground rules. First of all I want you to feel relaxed.

I'm not, no smoking gun questions or trick questions or anything

10 like that. That isn't what we're doing here. If you at some time, this

is usually a little different. I'm sure you've been through these kind 11

12 of things before. If um, I do things a little differently. I do not mind

if at any time if you want to ask me where I'm going with a question 13

or a reason why I asked a question, I will be happy to give you and 14

15 answer. Remember that naturally you're under oath and you have to

answer truthfully, you know that. Also know that you have a duty to 16

17 answer as fully and completely as you can. Now in that regard, if at

18 some time I either interrupt you or I inadvertently as I am fond of

19 telling people make an error, if I do, you don't get a chance to 20

answer fully and completely, make sure you prevail upon me to do

that, ok. At some time during this interview, I assume Syndi that the objections except as to the form of the question are reserved until

23 time of trial, the usual stipulations will be in effect. Ah, from time

to time, it's unlikely because like I said I'm not much of a believer

MR. BAILEY: This is in operation. Tony you want to go ahead.

MR. MARCECA: It's, ah, 13:51 and good afternoon. My name is

Anthony Marceca. My address is 2219 Dixie Drive, York,

Pennsylvania. I'm employed by PR Video who has been contracted

to conduct this video deposition on behalf of the plaintiff. This

matter is docketed at 1:CV-01-0084 in the United States District

Court in the Middle District of Pennsylvania. And the caption is

Darrell G. Ober vs. Paul Eyanko, et al. And we are now on tape.

Ah, Thomas F. Williams, could I swear you in please?

MR. WILLIAMS: Sure.

MR, MARCECA: Do you mind raising your hand? State your name.

MR. WILLIAMS: Thomas F. Williams.

MR. MARCECA: And you swear to tell the truth, the whole truth, so 13

14 help you God?

MR. WILLIAMS: I do.

MR. MARCECA: Thank you.

MR. BAILEY: Mr. Williams my name is Don Bailey. I'm an

18 attorney, I know you and I have met before these are formalities I

19 must to go through. I am the attorney for the plaintiff Darrell G.

Ober. This is a deposition and just a few preparatory things before 20

21 we go through this. First of all it is a video deposition. You are

22 invited and you are welcome anytime you want to visit the office to

view the video deposition. You have the right under court rules to 23

do that and we will make the office and a TV monitor available to

in doing contentious depositions, if at some time your attorney has

and be sure you do whatever. I think for the purposes of these

depositions I think we're all agreed, although she may not formally 4

an objection or a reason to stop or interrupt, listen to your attorney

be your attorney that she would act as your attorney through these 6

hearings, even though you're retired. I'm gonna assume that. So if

she at some time objects, raise a point, raises a point, please stop

and wait until you hear from her before you begin. Ok? Before we

got back at it again. You're being videotaped. Our field is relatively

small here but sometimes you shift position or get up we'll have to 10

11 stop at that point. Ah, try to stay in basically the same place that

12 you are. Lastly, at some point you need to suspend, you want to talk

13 to Ms. Guido, use the restroom or whatever please don't be shy or

14 bashful about doing that. We'll suspend and accommodate you.

15

Major, do you have any questions for me before we begin?

16 MR. WILLIAMS: No.

2

MR. BAILEY: Airight sir, as I said, and a number of questions 17

18 begin with some personal information first. I understand Major

19 Thomas Williams that you're retired?

20 MR. BAILEY: When did you retire?

MR. WILLIAMS: In July of 2000.

22 Mr. BAILEY And how long had you been with the

23 Pennsylvania State Police?

Thirty-three plus years.

- Q: And the last year or so that you were with the Pennsylvania
- 2 State Police could you just give us a brief description of your
- 3 duties?
- 4 A: Yeah, I was area two commander which is comprised of
- 5 Troops F, Troop P and Troop R. and basically what I do is I
- 6 oversee the activities that occur in those troops.
- 7 Q: Ok. Now, an area commander there's a number
- 8 of different troops within that area. I think you indicated that
- 9 A: There are three troops in that area.
- 10 Q: As of 1999, what were you doing for the State Police at that
- 11 time?
- 12 A: I was area two commander.
- 13 Q: Ok. Fine. And ah, as area two commander you
- 14 have a number of troops under you command and is the, ah, the
- 15 headquarters of the '=s not within your command, at least not
- some of it's functions but at least the area is, like Troop S and
- 17 that sort of thing is that within, Troop H within your area?
- 18 A: Troop H?
- 19 Q: Is Troop H within your area?
- 20 A: No, it is not.
- 21 Q: Where was your office?
- 22 A: My office was in Montoursville.
- 23 MR. Bailey: Which would be north of Harrisburg?
- 24 MR. WILLIAMS: North of Harrisburg, yes.

- 1 MR. BAILEY: Ok, now do you have a recollection of when you
- 2 first became aware of Darrell Ober, Captain Darrell Ober?
- Q: Yeah when I was working in department headquarters I think
- it was probably 1993 is when I was assigned down there as
- 5 the department disciplinary officer. I believe Captain Ober
- 6 was then Lt. Ober. He worked in BPR.
- 7 MR. BAILEY: Ok, and ah, what was your function down, what did
- 8 you do at that time, 1993?
- 9 MR. WILLIAMS: I was the department disciplinary officer.
- 10 MR. BAILEY: How long were you department disciplinary officer?
- 11 A: From November of 1993 (pause) till I believe January of
- 12 1996.
- 13 MR. BAILEY: When did Mr. Evanko become commissioner
- 14 of the Pennsylvania State Police?
- 15 MR. WILLIAMS: I don't recall the exact date.
- 16 MR. BAILEY: Had he had any, did he have any background in the
- 17 Bureau of Professional Responsibility? Had he serve there?
- 18 MR. WILLIAMS: My understanding is that he did, I never worked
- 19 down there at that time.
- So you didn't know him at that time.
- 21 A: No, I don't have, I knew who he was but
 - that's

22 about all.

- ____
- 1 MR. BAILEY: Alright sir. At, I'm gonna bring you ahead in time
- 2 now, to the year 1999. Did you recollect when you first saw or
- talked to Captain Ober in 1999, during that year? At this time
- you're up as an area commander, your headquarters are in
- 5 Montoursville, did you at some time in 1999 talk to Captain
- 6 Ober?
- 7 MR. WILLIAMS: I, I'm sure at some point in time I did but I'm not
- 8 sure when it would have been.
- 9 MR. BAILEY: Do you remember ever talking with Mr. Evanko
- 10 about Captain Ober?
- 11 MR. WILLIAMS: Yes, just prior to being assigned this inquiry.
- 12 MR. BAILEY: Have you had an opportunity to read the complaint
- in this matter? Review it or look it over?
- 14 MR. WILLIAMS: Which complaint would that be? I don'
- 15 know what you're referring to Mr. Bailey.
- 16 MR. BAILEY: Ok, you're here for a deposition, to provide
- information. I would assume that you are aware there's an
- underlying complaint that's been filed in Federal Court. Ah, have
- 19 you ever had the opportunity to read the complaint?
- 20 A: I'm sure I have but I don't recall exactly what
- 21 was in it, though.
- 22 Q: Oh no that's alright. I'm just asking if you ever
- 23 had an opportunity to review it or see it?
- 24 A: I'm sure that that would be the case.

- 1 MR. BAILEY: Can you tell me when?
- 2 MR. WILLIAMS: No I can't. I'm sure it was in 1999 some time but

- 3 I can't recall exact months of dates/
- 4 Q: Ok, well you'd indicated that you spoke with
- 5 Mr. Evanko about Mr. Ober. Was that by your choice or did the
- 6 commissioner contact you? How did that come about?
- 7 A: You're talking about prior to the investigative
- inquiry on Captain Ober? Is that what you're talking about?

 MR. BAILEY: Sure. I'm talking about the year 1999.
- 10 MR. WILLIAMS: 1999, if you're talking about Captain Ober, I
- believe I was contacted by then Lt. Colonel Joe Westcott.
- 12 MR. BAILEY: Ok.
- 13 MR. WILLIAMS: Who basically told me he had an assignment for
- 14 myself and Major Werts.
- 15 MR. BAILEY: Ok, where were you when Mr. Westcott contacted
- 16 you?
- 17 MR. WILLIAMS: I was probably in Montoursville Headquarters
- although I can't swear to that. I could have been out visiting
- 19 somewhere.
- 20 MR. BAILEY: But it was by telephone?
- 21 MR. WILLIAMS: As I recall, yes, it was.
- 22 MR. BAILEY: Who was with you?
- 23 MR. WILLIAMS: I believe I was by myself.
- 24 MR. BAILEY: Ok sir. And Mr. Westcott contacted you by, it

- wouldn't have been by radio, it would have been by telephone.
- You weren't out on somewhere on the road, if you remember, it 2
- that right? 3
- MR. WILLIAMS: Well, no. we don't communicate back and forth 4
- by radio.
- 6 MR. BAILEY: You don't use the radio for that purpose. Now, ah,
- so you would have been in an office somewhere?
- MR. WILLIAMS: Somewhere.
- MR. BAILEY: You don't remember where but you would have
- been in an office somewhere.
- MR. WILLIAMS: Somewhere, yes. 11
- MR. BAILEY: Now, Mr. Westcott called you on the telephone and, 12
- 13 ah. Tom what did he say to you.
- MR. WILLIAMS: I don't remember exactly what he said but I 14
- remember the general context was he had a, ah, an assignment 15
- 16 for myself and Major Wertz and would we come down and
- 17 discuss it with him and the Commissioner. I believe that's how it
- 18
- 19 Mr. BAILEY: Ok. Do you remember when that was, when that call
- took place? What month? 20
- 21 MR. WILLIAMS: No. I don't.
- MR. BAILEY: Now, ah, he wanted you to come down and talk with 22
- 23 him, he indicated to you apparently, he had already talked to, or a
- decision had been made that Major Wertz would be involved in

- this thing, right?
- MR. WILLIAMS: I believe that's what was mentioned yes.
- MR. BAILEY: Ok, now, and he wanted you, Mr. Westcott did,
- wanted you to come down and meet with him and the
- commissioner? Did that meeting take place?
- MR. WILLIAMS: Yes it did.
- MR. BAILEY: Where did it occur?
- MR. WILLIAMS: It occurred down in department headquarters in
- the executive offices.
- MR. BAILEY: In a conference room or in Mr. Evanko's office?
- MR. WILLIAMS: I believe Major Wertz and I, you know, based on
- our schedules we determined a time to go and we were down 12
- there and went in and Lt. Colonel Westcott took us over to the
- Commissioner's office. As I recall anyway.
- MR. BAILEY: Ok.
- MR. WILLIAMS: And we all sat down in his office
- MR. BAILEY: Ah, Tom who all was in that office?
- MR. WILLIAMS: Well I know, initially, myself, Major Wertz, the 18
- 19 Commissioner, and Colonel Westcott. I don't know whether
- 20 Colonel Westcott, I don't recall whether Colonel Westcott
- subsequently left the room or whether he stayed there the whole 21
- 22
- 23 MR. BAILEY: Ok, Mr. Westcott, Mr. Wertz, Mr. Williams, you,
- Commissioner Evanko, was Mr. Corey in that meeting?

- MR. WILLIAMS: I don't know. I don't recall that he was but he
- may have been.
- MR. BAILEY: do you have a recollection of whether any one else
- was in that meeting. Tom?
- MR. WILLIAMS: No. Not that I can think of.
- MR. BAILEY: Do you remember how long the meeting lasted?
- No, it wasn't a very long meeting, you know.
- What? Tell us what transpired. Who said what and in what order. Just tell us what went on
- 10 I don't know whether I can tell you who said
- 11 what. I just remember the overall context of the meeting which
- 12 was the commissioner wanted myself and Major Wertz to make
- an administrative inquiry concerning the fact that he was not 13
- notified of an investigation that had come about from the FBI 14
- from a complaint made to Captain Ober and he was never notified of the complaint it self until some months after the 16
- 17 complaint was actually filed.
- MR. BAILEY: Well, ah, was there any secret about the fact that he 18
- had not been notified until some months after. That was a given 19
- fact. No one contested that fact did they?
- MR. WILLIAMS: Not that I'm aware of.
- MR. BAILEY: Ok, as you sat there that day, would this have been
- 23 in June or May?
- MR. WILLIAMS: I'd be guessing. I'd have to review reports.

- MR. BAILEY: Well guesstimate is ok but don't guess wild here.
- That's correct. Ok, let me ask you some questions about that.
- And from time to time I may change directions and where I'm
- going with questions and if I do I'll tell you about that and give
- you a chance to adjust. Right now, I want to talk about that
- meeting. What occurred there that day. What was your
- understanding of what you were supposed to investigate?
- MR. WILLIAMS: I was just supposed to investigate the circumstances that brought about this complaint.
- MR. BAILEY: Well, ah, did anybody suggest talking to the FBI. 10
- MR. WILLIAMS: I don't know if anybody suggested 11
- It's just a course that you do. I know to do that and so, 12
- subsequently I did talk to the FBI. I would talk to anybody that 13
- 14 had any dealings or
 - whose names were brought up during
- 16 the course of the inquiry.
- 17 MR. BAILEY: Sure . Well those are the instructions Mr. Evanko
- gave you.

- MR. WILLIAMS: He just as I recall, he just said he wanted us to 19
- look into it and put it on paper and then he would review it. And 20
- that's what we did.
- MR. BAILEY: But, see, what I'm asking I understand what he said 22
- but what I'm asking for is your perception. You know you're
 - sitting there. He's the Commissioner of the Pennsylvania State

- Police, he's your commander, he's the man who gives the orders,
- ah, and he wanted you to look. Was he's asking you to look into
- why he was notified so late? Is that what he was trying to find?
- 4 MR. WILLIAMS: That was part of it. He wanted to know why
- Colonel Hickes was notified and just look into the incident and
- 6 see what you come up with.
- 7 MR. BAILEY: Do you know whether he had ah, did he indicate
- that he had just called Captain Ober and ask him? Why was I told
- 9 late?
- 10 MR. WILLIAMS: I don't recall. I don't recall that. I'm not saying it
- 11 wasn't mentioned just I don't recall it.
- 12 MR. BAILEY: Tom did you ask, I'm not trying to imply that this
- would not be bold or not so proper, I just don't know. Did you
- 14 ask the commissioner for a briefing or what he knew about it.
- 15 MR. WILLIAMS: Well he told us. And that's what I'm saying he
- told us about the fact, ah, that Colonel Hickes had been notified
- 17 and not himself or Lt. Colonel Corey.
- 18 MR. BAILEY: Ok. Well let's explore that for a second. He told
- 19 you, he told you Colonel Hickes was told before I was told.
- 20 MR. WILLIAMS: I don't know that it was in those words, but right.
- 21 The context of the meeting was, yes.
- 22 MR. BAILEY: Well, do you have a recollection of thinking about
- 23 why he brought that to your attention?
- 24 MR. WILLIAMS: No.

- 1 MR. BAILEY: I mean it was a given at the meeting was it not. No
- question Captain Ober knew about it. Right? And hadn't told the
- 3 commissioner until some months later.
- 4 MR. WILLIAMS: That's my understanding, yes.
- 5 MR. BAILEY: And before you went to that meeting had Mr.
- 6 Westcott indicated to you why the commissioner was interested
- 7 in this matter?
- 8 MR. WILLIAMS: I don't recall that he did. I can't honestly recall
- 9 that he did.
- 10 MR. BAILEY: Ok. Um, now the commissioner indicated that Mr.
- Hickes, he wondered why Mr. Hickes had been told?
- 12 MR. WILLIAMS: Why? That was mentioned. I don't know that he
- 13 wondered why. It was just brought up as I recall that he was
- 14 notified
- 15 MR. BAILEY: Then you don't know what was in his mind.
- 16 MR. WILLIAMS: No I don't
- 17 MR. BAILEY: But you know what he said.
- 18 MR. WILLIAMS: I'm trying to recall everything he said but I can't
- 19 recall. That's the problem.
- 20 MR. BAILEY: Well that's, that's normal. Human beings being
- 21 what we are. Did he, but he did indicate that Colonel, I guess it's
- 22 Lt. Colonel Hickes had been informed and he did indicate at
- 23 some point in this conversation that he, Mr. Evanko had not been
- 24 informed. That, at least those basic facts are pretty clear.

- MR. WILLIAMS: I recall that at a meeting I don't know who said it
- or how it came about but I recall leaving that meeting. That was
- 3 part of what was discussed.
- 4 MR. BAILEY: Did Mr. Evanko indicate that he had at any time
- 5 talked to the FBI about the matter.
- 6 MR. WILLIAMS: Yes, I believe at some point in time that did
- 7 come up but I don't.
- 8 MR. BAILEY: What did he say about the FBI?
- 9 MR. WILLIAMS: I'm trying to recall. If I'm not mistaken I think he
- 10 said something about SAC out there, either the SAC had notified
- 11 him or somebody had notified him. He had talked to them
- 12 anyway. I don't know who he talked to or anything. I just
- 13 remember him saying something that he had a conversation with
- 14 someone from the FBI.
- 15 MR. BAILEY: Did he say who the special agent in charge was?
- 16 MR. WILLIAMS: I don't recall again.
- 17 MR. BAILEY: It's ok. Alright now, what, we're talking about your
- mind now. You're sitting there, um what significance or any did
- 19 you attach to Mr. Evanko indicating that he had talked to the
- 20 SAC, the Special Agent in Charge, out there?
- 21 MR. WILLIAMS: I didn't make any assumption. I just know that he
- 22 talked to somebody out there. I just let that go.
- 23 MR. BAILEY: OK. What significance, if any, did you attach to the
- commissioner indicating that Mr. Hickes had known prior to the

- commissioner about this FBI probe?
- 2 MR. WILLIAMS: I think in my mind, I don't recall that he said
- 3 this, but I think in my mind I perceived him to wonder why, why
- 4 that Lt. Colonel Hickes was contacted and he wasn't contacted.
- 5 Or why Lt. Colonel Hickes didn't tell him about it.
- 6 MR. BAILEY: Ok. You weren't there that day, at least as you
- 7 understood it, to make an inquiry into Mr. Hickes though were
- 8 you?
- 9 MR. WILLIAMS: No but that would have been part of what we
- 10 would inquire about because it was mentioned, it was mentioned,
- 11 I believe that Lt. Colonel Hickes had known about it and
- certainly I would have interviewed him as part of the inquiry to
- 13 determine when he knew about it, what he was told, etc.
- 14 MR. BAILEY: Well you in fact did go and did talk to Mr. Hickes.
- 5 MR. WILLIAMS: Sure.
- 16 MR. BAILEY: But when I asked you the questions about Mr.
- 17 Westcott and you responded you didn't mention Mr. Hickes, you
- 18 indicated Mr. Ober. Do you want to. Can you..
- 19 MR. WILLIAMS: No wait a minute...
- 20 MR. BAILEY: Oh, you didn't?
- 21 MR. WILLIAMS: I'm missing something here.
- 22 MR. BAILEY: Let me tell you where I'm coming from. So far to
- 23 this point, it sounds to me, this is in keeping with the spirit to
- letting you know where I'm coming from. It sounds to me like,

- you know, you get a call from Mr. Westcott, and you're
- checking, the commissioner wants to check into something that
- has to do with Mr. Ober, we don't know exactly what Mr.
- Westcott said but it was about Mr. Ober. To check into this thing
- with Mr. Ober. Did Mr. Westcott mention Mr. Hickes when he
- called you? 6
- 7 MR. WILLIAMS: Right. That's what I'm getting to. I'm just
- looking for the little pieces of brick and mortar in the fact story
- here to try to understand what people's motivations and thoughts
- were. And I'm looking in, and what I'm asking you about are 10
- 11 those situations and those facts that would indicate so I can learn
- what the commissioner's thinking and his motivations. I'm trying 12
- 13 to fit Mr. Hickes into this picture because during this
- conversation and now I'm getting to a specific question, during 14
- this conversation as I understand it in the commissioners office 15
- 16 Mr. Hickes' name came up.
- MR. WILLIAMS: Yes, but I don't know who mentioned it. 17
- MR. BAILEY: But you remember Mr. Ober's name coming up. 18
- 19 MR. WILLIAMS: Sure.
- 20 MR. BAILEY: And you used the words, and you correct me if I'm
- 21 wrong, when I'd asked you the question about the interest in Mr.
- 22 Hickes on the behalf of the commissioner you said, I think your
- words were, would have been part of what you understood you 23
- 24

- MR. WILLIAMS: Yes 1
- MR. BAILEY: So what you're telling us there is what you
- understood the FBI probe to be about, some kind of allegation
- that somebody had compromised the law, duties under the law, a
- regulation or whatever, somebody had done something wrong
- about either hiring or promoting somebody. Is that right?
- MR. WILLIAMS: It was hiring somebody.
- 8 MR. BAILEY: And, uh, what I'm asking is did you have an
- understanding of what Captain Ober was supposed to have done?
- In other words, being more specific, what was Captain Ober 10
- 11 supposed to do once the FBI talked to him?
- MR. WILLIAMS: As far as I'm concerned? 12
- MR. BAILEY: Oh, ok. Your own thoughts then, as far as you're
- concerned. What was he supposed to have done?
- MR. WILLIAMS: I think he should have reported it to his superior. 15
- MR. BAILEY: And who was his superior?
- MR. WILLIAMS: At the time I believe it was Major Connally.
- 18 MR. BAILEY: Ok and, ah, is that what was discussed there in the
- room that day?
- MR. WILLIAMS: Not that I recall, no.
- MR. BAILEY: Um did Major Connally's name come up?
- MR. WILLIAMS: I don't recall it coming up.
- MR. BAILEY: Ah, and were you aware of who Major Connally
- was at that time? 24

- MR. WILLIAMS: I tried to convey the fact that I would have
- interviewed Lt. Colonel Hickes because that's who Captain Ober,
- at the time reported that to and I would have wanted to know
- when he reported it and what was said.
- MR. BAILEY: Ok, let me go back to my last question then. You
- didn't understand the inquiry then to be into what happened with
- Captain, with Mr. Hickes but the inquiry was about why Mr.
- Ober went to Mr. Hickes.
- MR. WILLIAMS: Yes, I believe that would be correct.
- MR. BAILEY: Ok, and did the commissioner offer any thoughts or
- 11 reflections on why Mr. Ober reported this information to Mr.
- Hickes as opposed to reporting it to reporting it directly let's say 12
- to the commissioner? 13
- MR. WILLIAMS: Not that I can recall, he didn't.
- MR. BAILEY: OK. At the time you were in the commissioner 15
- office, what understanding, if any, of what Mr. Ober was
- supposed to have done at that point? 17
- MR. WILLIAMS: It was my understanding that he had supposedly 18
- received information some months earlier of a trooper on the job 19
- taking a bribe to somehow get a prospective state police 20
- 21 applicant moved up on some type of a list or something. Moved
- 22 to where they were accepted at the academy when in fact they
- were not eligible to be accepted at the academy.
- MR. BAILEY: Ok. I'm sorry, you done?

- MR. WILLIAMS: Sure. I knew who Major Connally was yes.
- MR. BAILEY: Did Commissioner Evanko say I want to know or I
- want to find out why Mr. Ober told Mr. Hickes but didn't tell Mr.
- Connally. I mean you told me Mr. Connally's name didn't come
- 5

- 6 MR. WILLIAMS: No, I don't recall it coming up. I can't remember
- particulars about that meeting. I can only remember the concept.
- I can't attribute statements to people. I just can't do that.
- MR. BAILEY: No, and I don't want you to. I can only, and I hate to
- use this phraseology, but what happens, anytime you asked somebody a question in a deposition, you're trying to learn 11
- 12
- things, you get an answer. The answer, to use an old metaphor, 13
- the answer begs a question, because, you know, you're trying to learn more and add to it. The only place I was trying to go in 14
- 15 short was, I'm trying to figure from your recollection, you know,
- what occurred. So some of these questions may seem strange 16
- 17 forgive me for that. Remember I wasn't there so I don't know.
- 18 I'm just trying to search the corners of your mind and I realize
- 19 you haven't been questioned before so you don't know either.
- I'm just trying to learn about it. The point is though, the point is 20
- 21 though, and the Commissioner brought up Mr. Hickes' name you
- didn't, right? You didn't bring up Mr. Hickes' name, the 22
- commissioner did.
- MR. WILLIAMS: I don't know who brought it up. Like I said I'm

- unable to recall exactly whether Lt. Colonel Corey was in that
- 2 meeting or whether Lt. Colonel Westcott stayed the whole time
- or whether he left. I just don't recall.
- 4 MR. BAILEY: Ok, but Mr. Connally's name didn't come up, you
- 5 know that?
- 6 MR. WILLIAMS: No, I don't recall that at all.
- 7 MR. BAILEY: Now, so at that time, at that time, did you know
- 8 what Mr. Ober's chain of Command was at that time?
- 9 MR. WILLIAMS: Yes, I would have known.
- 10 MR. BAILEY: And was Chain of Command the issue?
- 11 MR. WILLIAMS: I don't know if that was the entire issue. That's
- 12 part of what the inquiry was about, what was done and how it
- 13 was done and what the reasons were for it being done.
- 14 MR. BAILEY: Why'd they need, why did they need you, no
- 15 reflection on you. I'm sure they chose you because you're a very
- capable man but why would they need you and anyone else why
- 17 Mr. Ober, why not ask Mr. Ober why he talked to Mr. Hickes?
- 18 MR. WILLIAMS: I think probably because there were more than
- just a few people who had to be interviewed concerning this and
- 20 they turned to the Majors, that's our job, to look into these things
- 21 so that they don't get bogged down in it.
- 22 MR. BAILEY: Who are they?
- 23 MR. WILLIAMS: The front office. You know as I recall and I don't
- 24 remember exactly what it was, but it was something about a Lt.

- 1 Colonel's name being mentioned so he wouldn't go to the Lt.
- 2 Colonel. At least in my estimation he wouldn't if in fact a Lt.
- Colonel was mentioned. So who else does he go to? He goes to
- 4 the rest of his senior command, the area commanders.
- 5 MR. BAILEY: To find out if Mr. Ober had violated some
- 6 regulation?
- 7 MR. WILLIAMS: It was, it was based, we were to do the inquiry
- and then turn that information into the commissioner and then he
- 9 would make any determination as to Captain Ober's conduct or
- 10 anything. We didn't do that.
- 11 MR. BAILEY: You were to gather facts. You were not playing the
- role of a lawyer. You were not playing the role of a judge.
- 13 Correct?
- 14 MR. WILLIAMS: That's correct.
- 15 MR. BAILEY: So you were just gathering facts and information.
- 16 And that's what you did.
- 17 MR. WILLIAMS: That what I did.
- 18 MR. BAILEY: Alright, now. Mr. Evanko, did Mr. Evanko indicate
- 19 at any time during this meeting during this meeting that we're
- 20 discussing what he thought Mr. Ober had done wrong?
- 21 MR. WILLIAMS: No, if you know the commissioner he's very
- 22 careful not to try to impose his views on anyone else and I think
- 23 what he wanted Major Wertz and I to do was just, as you termed
- 24 it, be fact finders and not prejudice us one way or the other.

- MR. BAILEY: Ok, now did he indicate when he talked with you in
- 2 this meeting whether he had done any kind of pre-investigation
- 3 or pre-inquiry into things?
- 4 MR. WILLIAMS: I don't recall anything like that being said.
- 5 MR. BAILEY: I'll give you an example. If I'm sitting down
- 6 somewhere and I have some investigators working with me and I
- 7 give them a little background of what I'd like them to look into.
- 8 Did you get any background?
- 9 MR. WILLIAMS: Do you mean from the commissioner?
- 10 MR. BAILEY: Yes.
- 11 MR. WILLIAMS: He basically told us he just wanted this looked
- into and determine what happened because he wasn't sure what
- 13 happened. That's the way I looked at it anyway.
- 14 MR. BAILEY: Did he indicate he didn't know why he wasn't told?
- 15 MR. WILLIAMS: I, don't, I honestly don't know/
- 16 MR. BAILEY: No I not, these are just questions I have to ask and I
- 17 understand that you may not know but I just wondered if he
- indicated why Mr. Ober didn't tell me.
- 9 MR. WILLIAMS: I don't recall that. Problem is I never took any
- notes in a meeting like that and it's based solely on my
- 21 recollection. I guess my recollection isn't all that good
- 22 sometimes. But it was sometime ago too.
- 23 MR. BAILEY: Ah, do you know whether anyone took any notes?
- MR. WILLIAMS: Not that I'm aware of,

- MR. BAILEY: Was the meeting taped or anything like that?
- 2 MR. WILLIAMS: Not that I am aware of, no.
- 3 MR. BAILEY: Ah, do you have a recollection of whether you asked
- 4 any questions?
- 5 MR. WILLIAMS: No, I think it was just conversation and we were
- 6 given guidelines to look into it to see what had happened and
- 7 when it happened.
- 8 MR. BAILEY: You called this an inquiry. Was that the
- 9 commissioner's choice of words?
- 10 MR. WILLIAMS: No, it's probably mine because I didn't term it a
- 11 quote investigation because there was no official report made up
- on it. It was a from / to subject letter I believe from myself and
- 13 Major Wertz to the Commissioner,
- 14 MR. BAILEY: Did both you guys sign it?
- 15 MR. WILLIAMS: We both initialed it as I recall.
- 16 MR. BAILEY: Both initialed it?
- 17 MR. WILLIAMS: And basically what that report consisted of, as I
- 18 recall again, was just a very short paragraph telling him that we
- had finished and the attachments are attached. We didn't make
- any recommendations or anything. It was just a very brief from /
- 21 to subject letter to him and what we wanted him to do was draw 22 his own conclusions based on the interviews that were made. So
- 23 there were a number of interviews attached to that report.
- 24 MR. BAILEY: Ok. Off the top of your head what interviews were

- attached. We know one, of course, was Captain Ober, we're
- 2 going to go over that in a minute.
- 3 MR. WILLIAMS: I believe the commissioner was interviewed.
- 4 MR. BAILEY: Paul Evanko was interviewed/
- 5 MR. WILLIAMS: Yes. I believe Lt. Colonel Corey was
- 6 interviewed. The FBI agent, I'm trying to recall his name, couch
- 7 or
- 8 MR. BAILEY: Cush?
- 9 MR. WILLIAMS: Cush, Cush, he was interviewed. Major Dane
- 10 Merryman was interviewed. I believe she was a Lieutenant at the
- 11 time Dana Sipher. There were a number of interviews in there. I
- 12 recall those off the top of my head. I have to refresh my memory
- 13 to come up with any other ones.
- 14 MR. BAILEY: Ok. Were all those interviews taped
- 15 electromagnetically, with a tape recorder.
- 16 MR. WILLIAMS: Yes they were.
- 17 MR. BAILEY: Now, Tom, five years you were a disciplinary
- 18 officer?
- 19 MR. WILLIAMS: No, ah just like two years.
- 20 MR. BAILEY: Two years. Ah, what, after concluding your
- 21 investigation did you come to a conclusion as to any regulations
- 22 that Mr. Ober had violated?
- 23 MR. WILLIAMS: No I did not. I didn't do that purposely. I just let
- 24 the interview, the attached interviews speak for themselves.

- 1 MR. BAILEY: Ok, now this meeting you had with the
- commissioner. Was it the only meeting you had with the
- 3 commissioner where Mr. Ober was discussed?
- 4 MR. WILLIAMS: No I believe once we finished the inquiry I
- 5 believe that Major Wertz and I went back down to department
- headquarters and hand delivered that from / to subject letter and
- 7 attachments to him personally.
- 8 MR. BAILEY: And who was present at that gathering?
- 9 MR. WILLIAMS: I know the three of us. I don't recall anyone else.
- 10 MR. BAILEY: Ok, and what was said?
- 11 MR. WILLIAMS: Basically we just told him the investigation is
- 12 completed. All the attachments are there. All you have to do is
- 13 read it and he could make his own mind up.
- 14 MR. BAILEY: Now at the first meeting when you had gone in to
- 15 discuss, there were two meetings that you had with the
- 16 commissioner where Mr. Ober was discussed. Just two now that
- 17 you can recollect?
- 18 MR. WILLIAMS: That I can recollect.
- 19 MR. BAILEY: And ah, at that first meeting was the governor's
- 20 office discussed?
- 21 MR. WILLIAMS: I honestly don't recall.
- 22 MR. BAILEY: Did Mr. Evanko indicate that he had any either
- 23 instruction or guidance to look into this matter?
- 24 MR. WILLIAMS: I don't recall that being discussed either.

- MR. BAILEY: Now, ah, I'm not, I don't want you to think I'm
- toying with words, I'm trying to figure out, and its been going in
- 3 the back of my mind sort of rattling around since you indicated it,
- 4 you said this wasn't an investigative inquiry. It was a to / from
- 5 letter. Do you remember that? Am I right about that? Is that what
- 6 you said?
- 7 MR. WILLIAMS: Yeah, I said I didn't determine it to be a quote
- 8 investigation because there was no formal report written up on it.
- 9 I didn't determine it to be an internal affairs investigation
- 10 because in an internal affairs investigation you make up a
- specific report on it. It was a fact-finding mission and therefore I
- just put it on a from / to subject letter and sent it, ah gave it to the
- 13 commissioner.
- 14 MR. BAILEY: So you weren't doing an investigation. This is
- 15 not an investigation.
- 16 MR. WILLIAMS: I guess it's simply a matter of semantics. I didn't
- 17 determine it to be that but I guess other people could determine it
- 18 to be that.
- 19 MR. BAILEY: What, as somebody with two years as a disciplinary
- 20 officer, what in you opinion would have or could have caused
- 21 someone else to view it as an investigation as someone with
- 22 experience in that field?
- 23 MR. WILLIAMS: I don't know. I imagine if you asked the average
- trooper out there, because that's all they do are investigations and

- 1 make investigative reports, they would consider it an
- 2 investigation. I didn't for the reasons I already told you.
- 3 MR. BAILEY: Well, did the people that you talked to, that you
- 4 questioned, were they free not to talk to you? Could they have
- 5 said "Bye-bye" I don't want to talk to you about this.
- 6 MR. WILLIAMS: I'm sure they could have.
- 7 MR. BAILEY: Did you tell them that they could?
- 8 MR. WILLIAMS: I don't recall that we did. No, as a matter of fact,
- 9 I would probably say no, we didn't tell them that.
- 10 MR. BAILEY: Well you're their employer, right?
- 11 MR. WILLIAMS: I'm not their employer, no.
- 12 MR. BAILEY: You're their superior officer.
- 13 MR. WILLIAMS: Sure.
- 14 MR. BAILEY: You tell them to sit down, do they sit down?
- 15 MR. WILLIAMS: Sure they do.
- 16 MR. BAILEY: You tell them to answer a question, do they answer
- 17 a question?
- 18 MR. WILLIAMS: Yeah, pretty much.
- 19 MR. BAILEY: Did you have them all, did you advise them all of
- 20 their responsibility to answer questions?
- 21 MR. WILLIAMS: I don't know that I did. I know I did with Captain
- Ober. I gave him his administrative rights as I recall.
- 23 MR. BAILEY: And why would he be different that anybody else?
- 4 MR. WILLIAMS: Because he was, he was kind of the focus, the

- subject.
- MR. BAILEY: He was the subject.
- MR. WILLIAMS: Whereas the other people were not.
- MR. BAILEY: Th other people were not. They were potential
- witnesses but he was the subject of the inquiry.
- MR. WILLIAMS: Yeah, I don't know how you would put it any
- other way, sure.
- MR. BAILEY: Mr. Hickes, you'd indicated you'd talked to Mr.
- Hickes
- 10 MR. WILLIAMS: Yes.
- MR. BAILEY: Ok. Was Mr. Hickes the subject of the inquiry? 11
- 12 MR. WILLIAMS: No, he was interviewed to make a determination
- 13 of when he was apprised of what happened, what he was apprised
- of and I believe we even asked him if he was apprised of it why 14
- 15 he didn't notify the commissioner?
- 16 MR. BAILEY: You're a little brighter than I am. You're a step
- 17 ahead of me. I may get there. Uh, so you asked him why he
- didn't tell the commissioner? 12
- MR. WILLIAMS: Sure. 19
- MR. BAILEY: And what did he say sir? 20
- MR. WILLIAMS: I'don't know. I'd have to review the report 21
- before I could tell you that. I honestly, it seems to me, I'm not
- 23 gonna say that because I can't be sure that was even mentioned. I
- was gonna say something about confidentiality but I can't, ah

- MR. BAILEY: You don't recollect why Mr. Hickes said he didn't
- tell the commissioner? You don't recollect that?
- MR. WILLIAMS: No because the problem I run into is that, is that,
- for a lack of a better term, I guess, there was a meeting that I
- believe Darrell attended along with Colonel Hickes when he
- advised the commissioner of what took place. And then there was
- a subsequent, for lack of a better definition, a meeting between
- Colonel Evanko. Lt. Colonel Corey and Lt. Colonel Hickes. And
- there were some things said in that meeting that I don't want to
- 10 overlap into his interview because I'm not sure. I know what the
- official reasons were he gave to the commissioner and all but I'm 11
- 12 not sure exactly what was said in the interview that we talked
- 13 about

- MR. BAILEY: What were the official reasons he gave to the 14
- commissioner on why he did not tell the commissioner about the
- 16 FBI probe when he first heard or shortly thereafter?
- MR. WILLIAMS: I believe one of them were he was told, I believe 17
- by the Captain that it was a confidential investigation and he didn't want to, you know, start putting that type of information
- 20 out, and I'm not a lawyer again but official oppression might
- 21 come into play there. I believe he talked about the department
- 22 itself and he wanted to keep the department clean that it not be
- 23 tainted in any way. And I believe another reason was, he talked
- about the fact that if the commissioner didn't know, he couldn't

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- be accused of tampering with and investigation or something like
- MR. BAILEY: He, he was protecting the commissioner?
- MR. WILLIAMS: Yes.
- MR, BAILEY: And did he indicate that maybe he had a concern or
- fear that someone might think that they were obstructing justice?
- MR. WILLIAMS: Yes. But I don't remember when it was
- discussed as I told you
- MR. BAILEY: Yeah that's ok. Did he indicate, we're just talking
- about his post-explanations or his reasoning anyway so it doesn't
- matter when it was discussed. But the question that I have is, did,
- had the FBI indicated they were concerned that this thing be kept 12
- confidential.
- MR. WILLIAMS: Based on my interviews they were not.
- MR. BAILEY: And who did you interview with?
- MR. WILLIAMS: I don't remember.
- MR. BAILEY: Did you say Mr. Cush?
- MR. WILLIAMS: I believe that's his name.
- MR. BAILEY: When did you talk to Mr. Cush?
- MR. WILLIAMS: I talked to him on two different occasions. I remember traveling out to the Finley Station and I talked to him.
- 22 END SIDE ONE (TAPE ONE) BEGIN SIDE TWO (TAPE

19

MR. BAILEY: Ok, let me go back and ask that question again. You

- did some interviews with the FBI agent. Is that correct?
- MR. WILLIAMS: That's correct
- MR. BAILEY: He was not concerned about confidentiality?
- MR. WILLIAMS: That's my understanding, yes.
- MR. BAILEY: Did he indicate what the investigation was into or
- who it was into?
- 7 MR. WILLIAMS: To me? Yeah he told me.
- MR. BAILEY: Who was it into? What was it about. I mean we
- know it was about.
- MR. WILLIAMS: It was about a trooper, a trooper, ah, Stanton, I
- 11 helieve his name was.
- MR. McGRATH: Can we stop a moment? You're recording, I 12
- 13 don't believe you're recording correctly. It's got a bar so can you
- 14 check your recording device?
- MR. BAILEY: This one here, oh this here? Just pull that thing on
- 16 the right. Ok. That wouldn't.
- MR. MCGRATH: You're blinking for some reason as you're 17
- recording. Is the device going?
- 19 MR. BAILEY: Yeah, it's working.
- MR. McGRATH: Ok, can you take a second look at you're
- MR. BAILEY: Sure.
- 22 MR. McGRATH: Sorry for the interruption, when your tapes
- popped that started. Got a slash through the recording. 23
- MR. BAILEY: I don't know what the reason for that could be. You

- 1 may want to change that cassette in that.
- 2 MR. MARCECA: Ok, right now we're gonna go offline for a
- 3 minute. It's 14:40 and we're going offline.
- 4 GAP WHILE CASSETTE BEING CHANGED.
- 5
- 6 MR. MARCECA: It's October 12, 2001. The time is 14:41. We just
- 7 put a new tape in this recorder. One second we're ready to go
- 8 hack online
- 9 MR. BAILEY: You're not running.
- MR. MARCECA: Ok. It's 14:43 and we're back on record.
- 11 MR. BAILEY: What did he indicate the FBI concerns were, Mr.
- 12 Cush, about the investigation, if any?
- 13 MR. WILLIAMS: I don't recall that he, that he voiced any
- 14 concerns. Like I said before I interviewed him twice. Once at the
- 15 Finley Station and once by telephone. And the purpose of that
- phone call was to ask him very specific questions.
- 17 MR. BAILEY: Um-hmm, like what?
- 18 MR. WILLIAMS: Uh, did he tell Captain Ober that this was a
- 19 confidential investigation? My recollection of that was, no, he
- 20 did not tell him that.
- 21 MR. BAILEY: What does 'confidential investigation' mean? I mean
- 22 I would assume all investigations are confidential. What a
- 23 confidential investigation?
- 24 MR. WILLIAMS: Well, I guess to me it's an investigation that only

- 1 people with a need to know would know about versus anyone
- 2 basically knowing about it.
- 3 MR. BAILEY: Did he indicate whether any State Representatives
- 4 were involved?
- 5 MR. WILLIAMS: I don't, I don't recall exactly whether he said
- 6 that. Somewhere during the inquiry process that was brought up,
- 7 certainly.
- 8 MR. BAILEY: What was brought up?
- 9 MR. WILLIAMS: About the possibilities of a Senator or a State
- 10 Representative being involved. And it was my understanding, I
- believe from him that they had determined that was not the case.
- 12 MR. BAILEY: After the fact?
- 13 MR. WILLIAMS: Yeah, I guess it would have been after the fact.
- 14 MR. BAILEY: I'm talking about the time that this gentleman, Mr.
- 15 Cush, talked to Mr. Ober.
- 16 MR. WILLIAMS: If you let me read my interview I would have a
- 17 bette
- 18 MR. BAILEY: Let's go by your recollection cause you talked to an
- FBI agent twice and twice that FBI agent told you that it wasn't
- 20 confidential.
- 21 MR. WILLIAMS: No once he told me.
- 22 MR. BAILEY: Oh, once he told you it wasn't confidential. Well,
- 23 MR. WILLIAMS: Because I think I forgot to ask him the first time

24 was the problem.

- MR. BAILEY: Oh, I see. Alright, Well, did he ever indicate there
- was an interest in the governor's office?
- 3 MR. WILLIAMS: Not to me he didn't. Not that I recall anyway.
- 4 MR. BAILEY: Then you don't know why Mr. Evanko would tell
- 5 the governor's assistant that there was some possibility that this
- 6 was in the affairs in the governor's office, do you?
- 7 MR. WILLIAMS: No.
- 8 MR. BAILEY: Ok. That's interesting. Well, let's talk about these
- 9 interviews with Mr. Cush. Uh, did you sit down with Mr. Cush?
- 10 MR. WILLIAMS: Yes, in the first interview I did.
- 11 MR. BAILEY: And that was out at Finleyville?
- 12 MR. WILLIAMS: Out at Finley, yes.
- 13 MR. BAILEY: I'm sorry, Washington county? Wherever it is, out
- 14 there?
- 15 MR. WILLIAMS: Yes, it's out west, out west somewhere.
- 16 MR. BAILEY: Out in God's country. (Laughs) I'm an old
- 17 southwestern Pennsylvanian. Now who was present when you did
- 18 that interview?
- 19 MR. WILLIAMS: Well, I know myself and him and I can't recall
- 20 whether his supervisor was there or not. Something in my mind is
- 21 telling me his supervisor was there but I don't recall him saying
- 22 anything or, you know, I think he was just there. Probably as a
- 23 support system or something. I don't know.
- MR. BAILEY: Well the FBI did, they definitely do the support

- system. Do you, do you, ah, do you remember if there had been
- an inquiry of this type actually prior to when Mr. Cush, by the
- 3 FBI, prior to when Mr. Cush had told Mr. Ober?
- 4 MR. WILLIAMS: My understanding there was some kind of
- 5 investigation that the FBI were doing some time prior to his
- 6 contacting Captain Ober.
- 7 MR. BAILEY: And that, ah, did they, the FBI agents ever indicate
- 8 that they had ever contacted anybody in the State Police about
- 9 any suck investigation prior to telling Mr. Ober?
- 10 MR. WILLIAMS: I don't recall that. I'm not saying that it didn't
- 11 happen but I don't recall that.
- 12 MR. BAILEY: Well, did Mr. Cush indicate or did Mr. Cush ever
- say anything to the effect of being concerned about higher-ups in
- 14 the State Police?
- 15 MR. WILLIAMS: Like I said again this was brought up by I don't
- know what part of the inquiry that I learned of this. I know that at
- one point in time there was a Lt. Colonel, no name mentioned,
- but there was a Lt. Colonel mentioned. I don't recall what part of,
- 19 ah, what I was doing in the inquiry, when I came across that.
- MR. BAILEY: Ok, Tom, let's try to break that down a little bit. I
 understand that there, we want to be real clear about this now.
- 22 What you're saying is that at sometime during your fact finding
- 23 mission, let's call it a fact finding mission, at some time during
- 24 your fact finding mission it was brought up that there was

- concern about higher-ups in the State Police. Am I right?
- MR. WILLIAMS: That's correct.
- MR. BAILEY: Well, did you ever trace that to this gentleman,
- Captain Ober's, own mind and conclusion or was that based on
- something else?
- MR. WILLIAMS: I'm not sure I understand your...
- MR. BAILEY: Was Captain Ober responsible after you did your
- fact finding mission for concluding that there were higher-ups in
- the State Police involved or did that originate with
- 10
- MR. WILLIAMS: I believe that that originated with the FBI. 11
- MR. BAILEY: Thank you sir. Thank you very much. I appreciate 12
- that. Now, when you talked 13
- MR. WILLIAMS: Let me clarify this.
- MR. BAILEY: Sure I want to get this, this point is very important.
- MR. WILLIAMS: I believe this, I believe it came through an 16
- 17 informant of theirs or something telling the FBI. I don't know if
- the FBI themselves concluded that. But, it, it didn't come from 18
- 19 Captain Ober. I mean he was parroting information he was
- probably given. 20
- 21 MR. BAILEY: Alright, sir. The point though is that eventually the
- investigation itself revealed that there were not higher-ups in the
- Pennsylvania State Police involved. Am I correct? 23
- MR. WILLIAMS: That's correct.

- MR. BAILEY: And the investigation, this is by the FBI eventually
- concluded that there was no one in the governor's office or the
- front office in state government involved at all. Is that correct?
- MR. WILLIAMS: Yes sir, to my recollection it is.
- MR. BAILEY: But your recollection is that the FBI regardless of
- where they may have gotten it passed on whether it was a
- concern or information you don't know. But passed that on to
- Captain Ober who parroted it. Is that correct?
- MR. WILLIAMS: Yeah, Well, I believe it is, I don't I don't know I
- 10 can't recall. I don't have the report in front of me. I can't recall
- when Captain Ober was given that information but I can recall 11
- somewhere along the line that he, that he repeated that 12
- 13 information and that's one of the reasons he gave me, or he gave
- us that he didn't go to any other Lt. Colonel because Lt. Colonel 14
- Hickes had just been promoted to that position and could not 15
- have been in that position whenever he received that information. 16
- MR. BAILEY: Alright sir, Thank you, Now, um, at some point in your, in doing the inquiry, at some you learned that indeed
- Captain Ober had gone to Lt. Colonel Hickes, right?
- MR. WILLIAMS: It was my understanding he contacted him by 20
- 21

- MR. BAILEY: Ah, contacted him by phone. Do you recollect who 22
- 23 technically at the time that Mr. Ober contacted Mr. Hickes, who
- Mr. Ober's superior officer was? Who Darrell Ober's superior

37

- officer was?
- MR. WILLIAMS: It would have been Major Conley.
- MR. BAILEY: Ok, Tom where was Mr. Conley at that time? At the
- time that Mr. Ober picks up this telephone and calls Mr. Hickes.
- where is Mr. Conley? He should be assuming command. Where
- MR. WILLIAMS: I can't remember the exact dates. I'm trying to
- recall. Seemed to me he was on a day off for some reason. Was
- there a funeral or something? Or
- MR. BAILEY: He's not allowed. I know you want to ask him but 10
- he can't do that. Use your best recollection. And I realize you do
- 12 not have the report in front of you in fairness to you but as best as
- 13 you can remember and then we understand that it's been a while.
- You know where he was, at a funeral, a day off, something
- MR. WILLIAMS: I'm ah, I'm just not sure.
- MR. BAILEY: Do you have a recollection though that he was not at 16
- his duty station and not available at the job. Do you remember 17
- that? 18
- MR. WILLIAMS: Something is telling me that's true but I don't 19
- remember specific dates to where I could say that the day Darrell 20
- got the call was the day that Major Conley was off. I don't recall 21
- 22
- MR. BAILEY: Fine sir. Does October 5 mean anything to you?
- MR. WILLIAMS: October 5 if I'm not mistaken was the day

- Captain Ober received a call from the FBI. Here again, I'm not
- positive of that either it's just
- MR. BAILEY: But you have a vague recollection that, but you're
- not sure why, and you're not certain, but you have a vague
- recollection that Mr. Conley may not have been available at his
- duty station.
- MR. WILLIAMS: May not have.
- MR. BAILEY: And for a legitimate reason of some type. But that's
- you recollection, right?
- Mr. WILLIAMS: Yeah. Something is telling me that but I can't pull 10
- 11 it out

23

- 12 MR. BAILEY: That's alright. Wasn't it a focal point, I hate that
- phrase, wasn't that a major of key issue in the inquiry though. 13
- 14 You know, why did Mr. Ober go to Mr. Hickes? And we have
- this thing with the FBI talking about a Lt. Colonel. We have a 15
- 16 newly promoted Mr. Hickes. We have Mr. Conley, maybe, now 17
- you're not, I realize it's a very, very, very low level of being sure about this, you know, just a lack of complete knowledge of it but 18
- 19 a vague recollection that Mr. Conley not being available for some
- reason. And I will offer to you that I think we can show that he 20
- 21 was not. But the point is though, ah, Mr. Ober goes to Mr.
- 22 Hickes or calls. It was a telephone call right? Calls Mr. Hickes.
- when he called him. I don't know whether it was October 5th or 24

MR. WILLIAMS: Yes that's my recollection. But I don't remember

- 1 sometime after October 5th.
- 2 MR. BAILEY: Do you have a recollection if it was at a time when
- 3 Mr. Conley would not have been available?
- 4 MR. WILLIAMS: Something is telling me yes but I can't
- 5 MR. BAILEY: But if that is, and I'm not certain I'm correct about
- 6 that either. You've got to understand I come in from the outside
- 7 and piece these facts together cause they're gonna be what
- they're gonna be. Ah, do you have recollection of any other
- 9 reasons, any other facts known to you should indicate why, or
- 10 explain why Mr. Ober went to Mr. Hickes or checked with Mr.
- 11 Hickes?
- 12 MR. WILLIAMS: Yeah for the reason that I articulated earlier I
- 13 believe this is what he said, the fact that a Lt. Colonel had been
- 14 mentioned. The two Lt. Colonels were presently assigned down
- 15 there, Corey and Westcott, had already been Lt. Coloneis for
- some time. Hickes had just been appointed to the position.
- 17 Therefore, since a Lt. Colonel was mentioned he would not have
- 18 been in his position at the time that this occurred.
- 19 MR. BAILEY: Which clears Mr. Hickes. Right?
- 20 MR. WILLIAMS: What do you mean clears him. I don't...
- 21 MR. BAILEY: Well, I mean, which means Mr. Hickes would not
- 22 have been that person, or Mr. Conley rather.
- 23 MR. WILLIAMS: That's correct.
- 24 MR. BAILEY: Ok. But why not tell Mr. Conley? If the

- 1 commissioner wants to know, and it's no secret that the
- 2 commissioner is not making claim that Mr. Ober violated some
- rule or regulation, commissioner's not saying that.
- 4 MR. WILLIAMS: He's not saying it.
- MR. BAILEY: Well, we're alleging, of course, that mistreated Mr.
- 6 Ober, that's one of our major allegations here. But to the best of
- my knowledge I think that I can represent to you that the
- 8 commissioner is not claiming that Mr. Ober did anything that he
- 9 can be disciplined for, maybe I'm wrong. But I don't know. I
- 10 could be mistaken. Was there any claim ever made that you? Any
- 11 discipline action ever brought against you?
- 12 MR. OBER: Not by official means, no.
- 13 MR. BAILEY: Ok. Now if one of the major points of the inquiry is
- 14 to find out why Mr. Ober goes to Mr. Hickes, or tells Mr. Hickes,
- 15 I'm sorry sir. Tells Mr. Hickes about this thing. Are there any
- other facts known to you that you can recollect now that either
- 17 Mr. Ober advanced or that your inquiry uncovered that would
- 18 explain why he didn't go to Mr. Conley assuming Mr. Conley
- 19 was sitting in the next office? Now we don't think he was an
- 20 that's going to be a factual issue but assume for the sake of
- 21 argument that Mr. Conley is down the hall, in an office sitting
- angument mativa. Comey is down the man, in an office similar
- 22 there, available. Do you have a recollection of any facts at all
- 23 advanced by Mr. Ober, or circumstances or witnesses, which
- 24 would explain why Mr. Ober didn't go to Mr. Conley?

42 .

- 1 MR. WILLIAMS: No. I think he should have if he was sitting down
- 2 the hall.
- 3 MR. BAILEY: That's why I asked that. Because you had indicated
- 4 earlier on that personally, you never said you wrote it down. You
- 5 never said you pushed the issue or anything like that or presented
- 6 it. But didn't you indicate that person, you said that Mr. Ober
- 7 should have gone to was Mr. Conley.
- 8 MR. WILLIAMS: Well, sure, that would be his superior. And that's
- 9 generally, not generally, that's what we always do. We report up
- 10 the chain of command.
- 11 MR. BAILEY: Why should he have gone to anybody at all?
- 12 MR. WILLIAMS: Ah, you would have to get into BPR. I don't
- 13 know what the rules and regulations say concerning the BPR, the
- running of the office. Or any instructions that Major Conley had
- 15 ever given Captain Ober concerning investigations. I think that, I
- 16 think personally overall that Major Conley as the Bureau
- 17 Director would be responsible for any and all investigations that
- 18 occur in his Bureau. And should probably be aware of every
- 19 investigation that's ongoing in that Bureau.
- 20 MR. BAILEY: Well, did you ever try to find out why the FBI didn't
 - go to Mr. Conley. What did they go to Mr. Ober for? Who's Mr.
- 22 Ober? I mean why go to Mr. Ober?
- 23 MR. WILLIAMS: Maybe they called, I mean I don't know this but
- if you're saying that he was off and he called Darrell would have,

- I don't know if he was in an acting capacity, but he would have
- 2 been the senior officer there.
- 3 MR. BAILEY: Well let's, let's explore that. Did you find out what
- 4 the time constraints were. Was there some immediate need for
- 5 the FBI to talk to the first person they got on the telephone or,
- 6 you know. Did you ever find out from the FBI or anybody else
- 7 why they told Captain Ober?
- 8 MR. WILLIAMS: No.
- 9 MR. BAILEY: Have you ever learned from any other source why
- 10 they told Captain Ober?
- 11 MR. WILLIAMS: No.
- 12 MR. BAILEY: As opposed to anyone else?
- 13 MR. WILLIAMS: No I would assume it's based on the fact that he
- 14 was the captain of the internal affairs and they had done, I'm
- 15 trying to think of the terminology they used. I think it was a
- political corruption investigation and they had determined there
 was no criminal political construction, or political corruption. Se
- was no criminal political construction, or political corruption. So
 now since a trooper was involved possibly accepting a bribe to
- 19 get somebody pushed up on the cadet list it would be reported to
- 20 internal affairs, which was what Captain Ober was in charge of.
- 21 MR. BAILEY: Well, was Captain Ober in charge of that or was Mr.
- 22 Conley?
- 23 MR. WILLIAMS: Captain Ober is in charge of the internal affairs
- 24 section. Major Conley would oversee both the Systems and

- Processing review and the Internal Affairs.
- MR, BAILEY; Well in a direct chain of command so would Mr.
- Corey and so would Mr. Evanko, right?
- MR. WILLIAMS: Oh sure. But that's a bureau. Everything's
- contained within the bureau.
- MR. BAILEY: Understand, I'm just asking if you ever came to any 6
- conclusions or found why the FBI went to ah, decided to talk to
 - Mr. Ober, or why they didn't pick up a telephone and call Mr.
- Evanko or Mr. Corev or...
- MR. WILLIAMS: I think that most FBI agents, at least that I'm 10
- aware of, are pretty familiar with our operation and they know to 11
- call internal affairs if its going to be an investigation of a trooper. 12
- 13 MR. BAILEY: So to the FBI because they don't administratively
- control the Pennsylvania State Police which is a concurrent, you 14
- know, a separate and independent law enforcement agency, their 15
- protocol might indicate, you're not certain, assuming would 16
- indicate they go to internal affairs because that would be the
- contact person. But weren't there indications here that there was 18
- at least an interest, whether it was some misguided informant or 19
- 20 not, that there was something above this at a higher level?
- MR. WILLIAMS: Well, a Lt. Colonel was mentioned but still I can 21
- understand them going to internal affairs on it because a State
- Policeman is a State Policeman in their eyes. 23
- MR. BAILEY: Now if an outside agency comes to you about a

- corruption probe into your superior
- MR. WILLIAMS: My superior?
- MR. BAILEY: Your superior, you're immediate superior, would
- you tell your immediate superior?
- MR. WILLIAMS: No I would not. I would skip him and go to the
- commissioner.
- MR. BAILEY: Now they came to you and said we're looking into
- your superiors. With an (s) on the end. What would you do then?
- MR. WILLIAMS: I would still go to the commissioner.
- MR. BAILEY: Now if they came to you and they said we're 10
- 11 looking at your superiors, possibly even the commissioner
- himself. Would you still go to the commissioner?
- MR. WILLIAMS: I don't know. I'd have to think about that.
- MR. BAILEY: And what attorney would you hire after you were
- indicted for obstructing justice? 15
- MR. WILLIAMS: Probably you. (Laughter) 16
- MR. BAILEY: Probably me. That's a great joke but a very poor 17
- response. Alright now. What I'm trying to get at, where I'm
- going with this. What in the State Police regulation indicate, if 19
- you know the answer to this, indicate to you what you're 20
- 21 supposed to do if an outside agency says, look we've got a
- problem we're checking some things out, I'm not saying they're 22

- indicating any person, just a generally thing. There are higher-23
- 24 ups, there's a problem here. Now it's axiomatic is it not, this is

- 45
- I'm coming, I'll give you what's called an offer of proof on these
- questions. It's axiomatic that they have entrusted Darrell, excuse
- me, Darrell G. Ober. Ok?

- MR. WILLIAMS: I think they probably did.
- MR. BAILEY: Ok. So base on that and we're not alleging and I'm
- not saying you have any information to indicate this by the way,
- but at least based on that they felt comfortable. There had to be
- some comfort level. So the go to Mr. Ober, to Darrell. It's not to
- say and we're not alleging that they had any reason not to go to
- anyone above Mr. Ober in the chain of command. Fact is they 10
- 11 went to MR. Ober. Now, I'm going to ask you a different line of
- questions. Ok? These questions are going to be mixed some of 12
- 13 these are going to be based upon your experience, many, many years as a disciplinary officer. Obviously a very capable and
- 15 successful career officer in the Pennsylvania State Police. And
- 16 secondly they're going to be based on knowledge or awareness
- on not just regulations of the State Police but customs and 17
- practices the way of doing things. So let me begin this way. Do
- you know as you sit here today of any regulations. I'm not talking
- about practices or customs, but regulations that require an officer 20
- 21 that acquires information indicating that there may be people in
- higher positions above that officer involved in public corruption, 22
- that that officer has a duty to report awareness of an outside 23
- problem? Let me make it a little simpler. I'm a Pennsylvania 24

- State Police Officer. I become aware, officially, not just by
- rumor, rumors or a story. But officially I get a report or I get
- information from outside, a legitimate law enforcement agency,
- that there may be, there might be a problem with people above
- me in the chain of command. What are, as you understand it,
- what are my duties as an Officer in the Pennsylvania State
- Police?
- MR. WILLIAMS: I would, based on my experience, I would have
- done in the past. I always reported to my superior officer.
- MR. BAILEY: Well, if you knew, you've already responded that if 10
- you knew a particular person above you in the chain of command 11
- 12 was doing something wrong and there was a probe you wouldn't
- advise them in that situation
- MR. WILLIAMS: Repeat the question. 14
- MR. BAILEY: Ok. If an outside, the FBI comes to you and says
- 16 Jane Doe, Joe Smoe, above you in the chain of command is
- suspected of doing X, Y, and Z. We're investigating them. 17
- Maybe they're coming to you as a fact witness and asking you 18
- 19 information. You're not going to tell that person up there that
- that investigation is going on. 20
- MR. WILLIAMS: I certainly am. 21
- MR. BAILEY: You would?
- MR, WILLIAMS: Yes, I would.
- MR. BAILEY: Alright . So you know if any Pennsylvania State

- Police regulation require you to do that.
- MR, WILLIAMS: I can't think of any offhand. At least while I was
- on. My son is on the job and he tells me there is a regulation to
- that. That speaks to the chain of command but I never read it. I
- don't know what that says now.
- 6 MR. BAILEY: Well in 1999 you know it was a whole other issue in
- this lawsuit about that. But in 1999, in or around when, the time
- when you did this probe do you have any awareness of a
- Pennsylvania State Police regulation which said if some outside
- agency comes in here and they're investigating somebody you 10
- 11 got to tell us. Have to now.
- MR. WILLIAMS: I don't know of any regulation. I do know that 12
- 13 everybody, virtually everybody, including Captain Ober at the
- time was aware of the fact that you should notify somebody 14
- 15 higher up. And that's obvious because did notify somebody
- 16 higher up. He wanted to get that off his conscience. He didn't
- 17 want to be responsible for it.
- MR. BAILEY: The reason, what is the reason why. He did notify 18
- somebody that was higher up. That's correct. But see my 19
- 20 question, I'm going to try to compartmentalize for you. I'm just
- asking, and maybe the short answer is you don't know of any 21
- 22 written requirement that you do so.
- MR. WILLIAMS: I don't know of any. 23
- MR. BAILEY: By custom, whether it's loyalty, whether it's good

- policy, whatever it might be, at least, speaking for yourself, if the
- FBI come to you says we're investigating Commissioner Evanko.
- You would tell Commissioner Evanko.
- MR. WILLIAMS: I told you I don't know what I would say in that.
- I would think long and hard and I would probably contact our
- legal department to get an interpretation of it.
- MR. BAILEY: That's what I thought and I think I asked a follow on
- question. And the reason I'm trying to clear that up is that I really
- think your response to another question I asked like that may
- have been confused because my question was poor. The point is
- if the FBI comes to you and says we're investigating 11
- Commissioner Evanko you would go and seek advice before you
- would just go run to Mr. Evanko. 13
- MR, WILLIAMS: Certainly I would.
- MR. BAILEY: Because you would have not only professional and 15
- ethical concerns but legal concerns. Am I correct?
- MR. WILLIAMS: Certainly, I would go to our legal department. 17
- MR. BAILEY: If the FBI came to you and they said, Tom, we're
- really upset about all this and I realize it's a problem but you 19
- know, we're checking into Commissioner Evanko on this. Ah, if 20
- you, if there's somebody in your chain of command, or even a 21
- colleague that you imminently trusted and believed in or knew 22
- 23 could not be part of the problem, would you consider confiding
- 24 in that person?

- MR. WILLIAMS: I guess it would be a consideration but in this
- particular instance, I think the proper thing to do, and I think as I 2
- recall, I think AR-425 is it spells it out that if somebody is in the 3
- chain of command above you and you receive a complaint about
- that person you go to his or her superior. Who would have been 5
- the commissioner at that point in time. That's who I would have
- gone to.
- 8 MR. BAILEY: Well, um if you're told it's possibly higher-ups or in
- the governor's office
- 10 MR. WILLIAMS: The specific rank of Lt. Colonel was mentioned.
- 11 Not Colonel. Lt. Colonel which would have prohibited Paul
- Evanko from being involved in it. In my mind. 12
- MR. BAILEY: You're very certain about that now?
- MR. WILLIAMS: Yes. I told you before that a Lt. Colonel was, 14
- was mentioned
- MR. BAILEY: Ok. Well, do you know whether any other language
- was used?
- MR. WILLIAMS: Possibly, But I don't, I don't recall, I recall Lt.
- 19 Colonel but I don't recall what other language there might have
- 20 been used.
- MR. BAILEY: Ok, you consider it disloyal for a Police Officer not 21
- to report information the officer acquires about a legitimate probe 22
- 23 into public corruption in the Police Department above them. Is
- 24 that dislovalty?

- MR. WILLIAMS: No, I don't think it's disloyal. I think it's foolish
- if you do something like that.
- MR. BAILEY: Why?
- MR. WILLIAMS: Because, I explained to you. All command
- people or virtually all command people in the Pennsylvania State
- Police know that you report those type of things to your superior
- officers
- MR. BAILEY: Well, I'm asking why you have this need or
- obligation to report to a superior. I mean do you trust the FBI?
- MR. WILLIAMS: Sometimes.
- MR. BAILEY: Do you trust the Pennsylvania State Police?
- MR. WILLIAMS: Most times. I distrust some individuals within 12
- 13 the Pennsylvania State Police.
- MR. BAILEY: Ok. But you didn't indicate that you trust the State
- Police, we're talking about institutions now, obviously there's
- 16 always a problem with individuals. But institutionally does the
- Pennsylvania State Police do better investigations than the FBI? 17
- MR. WILLIAMS; I think so. 18
- MR. BAILEY: Does the FBI ever do a better investigation than the
- State Police? 20
- MR. WILLIAMS: I'm certain that they do. Depends on the 21
- MR. BAILEY: Alright, why do you feel comfortable that as a police 23
- officer understands that there is an investigation in the higher-ups

- of there own agency that they have a duty to go and tell them?
- 2 Isn't that unlawful?
- MR. WILLIAMS: I didn't say tell those people. I said you by-pass
- 4 them and go to their superior.
- 5 MR. BAILEY: Do you bypass and go to the governor's office?
- 6 MR. WILLIAMS: I told you I would contact the legal department to
- seek out their advice on a situation like that. If you're using the
- 8 example that the commissioner did something wrong and some
- other agency the FBI called and they're doing an investigation on
- 10 the commissioner I would go to the legal department.
- 11 MR. BAILEY: and if you don't know, you only know it's higher-
- 12 ups you take a chance to go to the commissioner.
- 13 MR. WILLIAMS: I can't, I can't fathom Paul Evanko, you have to
- 14 now who you're dealing with here and I can't fathom Paul
- Evanko doing something that would be investigated by the FBI. I
- 16 just can't.
- 17 MR. BAILEY: I was never in my life able to fathom people on the
- 18 Supreme Court interfering with a presidential election.
- 19 MR. WILLIAMS: Well, you're wrong about that.
- 20 MR. BAILEY: I'd seen it happen before my eyes.
- 21 MR. WILLIAMS: Well and I feel that they were correct in doing
- 22 that. We're on two sides of the fence. I think they were correct in
- 23 doing that and they should have done that.
- 24 MR. BAILEY: Ok, now you had indicated with Mr. Cush, you went

- and talked to him on two different occasions?
- 2 MR. WILLIAMS: No, I talked to him personally one time and
- 3 telephonically the second time.
- 4 MR. BAILEY: When you went and talked to him, who was with
- 5 you the first time?
- 6 MR. WILLIAMS: I was by myself.
- 7 MR. BAILEY: How about the second time?
- 8 MR. WILLIAMS: I called him on the phone. I mean I was in a n
- 9 office somewhere and he was on the other end of the line.
- 10 MR. BAILEY: And he indicated that he didn't have a concern
- 11 about confidentiality.
- 12 MR. WILLIAMS: That's my recollection.
- 13 MR. BAILEY: Did you record that phone call?
- 14 MR. WILLIAMS: I did not.
- 15 MR. BAILEY: Did you ask him if you could record that phone call?
- 16 MR. WILLIAMS: No, I did not.
- 17 MR. BAILEY: Did you ever ask him for his notes, any 302's
- 18 anything like that?
- 19 MR. WILLIAMS: I don't recall if I did or I didn't.
- 20 MR. BAILEY: Um, Tom, you indicated that when you went and
- 21 gave the results of your investigation to Mr. Evanko, you had
- 22 statements and what not attached.
- 23 MR. WILLIAMS: Yes, attachments, statements of the people we

24 interviewed.

- MR. BAILEY: Was Mr. Cush one of those?
- 3 (Cell phone rings)
- 5 MR. MARCECA: We're gonna stop. It's now 3:14. We're gonna
- 6 take a break and we're gonna change tapes. (Video)
- 8 SHORT BREAK
- 9 MR, MARCECA: Ok It's now 15:20 and we're back on live tape.
- 10 MR. BAILEY: Major, I'm gonna change directions here just a little
- bit. Let's go back to when you did the interview, now. Ok?
- 12 MR. WILLIAMS: What interview is that sir?
- 13 MR. BAILEY: With Mr. Ober. So we're going to go back to
- actually doing the interview itself. Ok, ah, so you know how Mr.
- 15 Ober was notified?
- 16 MR. WILLIAMS: I know Major Wertz and I interviewed at least, I
- 17 recall it was BPR headquarters, no, it was department
- 18 headquarters down in Tom Corey's office as a matter of fact. I
- 19 don't recall how he was notified.
- 20 MR. BAILEY: Ok, do you remember when you first saw him that
- 21 day?
- 22 MR. WILLIAMS: No, I don't.
- 3 MR. BAILEY: Remember what he said?
- 24 MR. WILLIAMS: You mean at the interview or?

- 1 MR. BAILEY: Yes sir. Tom, the day when you and Mr. Wertz, we
- 2 just deposed a few minutes ago Mr. Carr. He was here just before
- 3 you
- 4 MR. WILLIAMS: Um-hmm. He sat in on that interview.
- 5 MR, BAILEY: Yes sir. I believe he did. So I'm just talking about
- 6 the interview where you and Mr. Carr, and Mr. Wertz and Mr.
- Ober, that's what I'm talking about. There was only one
- 8 interview, right? Am I correct?
- 9 MR. WILLIAMS: Yes.
- 10 MR. BAILEY: Ok. That's what I wanted to ask you that. Do you
- remember seeing or meeting Mr. Ober that day for the first time?
- 12 MR. WILLIAMS: Oh sure.
- 13 MR. BAILEY: Where did the interview take place?
- 14 MR. WILLIAMS: As I recall it was in Tom Corey's office, the
- 15 Deputy Commissioner of Admin's office. Down in department
- 16 headquarters.
- 17 MR. BAILEY: Why was it in the Deputy Commissioner's office?
- 18 MR. WILLIAMS: I believe we were looking for an office down
- 19 there that day and he wasn't there and we were able to use his
- office. Other than that no specific reason that I can recall.
- 21 MR. BAILEY: How many other inquiries of this type have you
- 22 done?
- 23 MR. WILLIAMS: One.
- 24 MR. BAILEY: When?

- MR. WILLIAMS: It would have been, I believe like in 96 or 97 I
- 2 don't recall exactly the year or the time but it involved Captain
- 3 Pat McHenry who was the commander of Troop E here.
- 4 MR. BAILEY: Was that a commissioner's inquiry?
- 5 MR, WILLIAMS: Yes,
- 6 MR. BAILEY: What regulations define what a commissioner's
- 7 inquiry is?
- 8 MR. WILLIAMS: I don't think there is any.
- 9 MR. BAILEY: Does that concern you?
- 10 MR. WILLIAMS: It hasn't concerned me. I now that he's the boss
- and if he wants an inquiry into something we'll look into it.
- 12 MR. BAILEY: Ok. Did Mr. Ober object to the inquiry at all?
- 13 MR. WILLIAMS: I can't recall him quote "objecting" saying he
- 14 didn't want to participate in it or anything . I think he was, to the
- 15 best of my recollection very cooperative.
- 16 MR. BAILEY: Ok. Did he ask what it was about?
- 17 MR. WILLIAMS: I believe he probably did. I don't remember what
- 18 the response was.
- 19 MR. BAILEY: Ok, well, was the interview taped?
- 20 MR. WILLIAMS: Yes, it was.
- 21 MR. BAILEY: Yeah, ah, Mr. Carr had indicated that. Who use the
- 22 tape recorder? Who ran it?
- 23 MR. WILLIAMS: Probably be either myself of Major Wertz. I may
- 24 have set it up and depending on who was asking questions the

- other person, either myself or Wertz would monitor to see where
- 2 it was on the tape, you know that sort of thing.
- 3 MR. BAILEY: You indicated another one of these commissioner
- 4 inquiries, did you conduct that one?
- 5 MR. WILLIAMS: Yes, I did.
- 6 MR. BAILEY: And who worked with you on that one.
- 7 MR. WILLIAMS: No one, just myself.
- 8 MR. BAILEY: Just you. There was no BPR control number
- 9 assigned to this because it was not a BPR was it?
- 10 MR. WILLIAMS: When I was doing it, I don't know what
- 11 happened subsequent to this but when I was doing it, no.
- 12 MR. BAILEY: No, I mean the thing with Mr. Ober, you don't have
- 13 any knowledge of it being a BPR.
- 14 MR. WILLIAMS: No.
- MR.: BAILEY: Do you know what was decided by the
- 16 commissioner about this matter?
- 17 MR. WILLIAMS: No I don't. I never had any discussions with him
- 18 after I turned that report in.
- 19 MR. BAILEY: Alright, now, do you have a recollection of Mr.
- 20 Ober asking for representation at the meeting?
- 21 MR. WILLIAMS: I'm sure he did because subsequently I believe it
- 22 was Trooper Carr, I wouldn't have remembered his name but he
- 23 came up and sat in on the meeting so, I believe he did ask for
- 24 representation.

- .
- MR. BAILEY: When I questioned you earlier you indicated that
 Mr. uh, you indicated, I thought you said you read Mr. Ober his, I
- 3 thought you said administrative rights. Ok. What's that? What
- 4 are administrative rights?
- 5 MR. WILLIAMS: I think, and then again it's been some time, I
- $6\,^{\prime\prime}$ think it discusses in there the fact that we are not questioning him
- concerning a criminal matter. Nor will the information we gain
 from that questioning be used in a criminal matter and I believe it
- a from that questioning be used in a criminal matter and I believe i
- advises him of the fact he can have a PSTA representative there
 and that he is to answer, answer the questions, I believe it talks
- about truthfulness. If there's anything else in there I can't recall
- 12 it
- 13 MR. BAILEY: And, ah, was the tape recording that was taken, was
- 14 it transcribed?
- 15 MR. WILLIAMS: Was what transcribed?
- 16 MR. BAILEY: The tape recording.
- 17 MR. WILLIAMS: Yes, Yes it was. It was transcribed.
- 18 MR. BAILEY: Ah, did you listen to it afterwards?
- 19 MR. WILLIAMS: I don't know that I listened to it afterwards. I
- know I listened to it prior to it being transcribed and the read the
 transcript, But I don't recall then going back and listening to it
- 22 again.
- 23 MR. BAILEY: Did you give the transcript to Mr. Evanko?
- MR. WILLIAMS: No, I believe I had my secretary at the time, I

- believe that's how it went, transcribe it.
- 2 MR. BAILEY: No, but I mean once it was transcribed and put in
- 3 written form do you know whether it was ever provided to Mr.
- 4 Evanko
- 5 MR. WILLIAMS: I don't recall whether the tapes were given to
- 6 him or whether the tapes were given to our legal department but
- 7 the tapes were turned in. I -I
- 8 MR. BAILEY: Do you have copies of the tapes?
- 9 MR. WILLIAMS: No, I do not.
- 10 MR. BAILEY: Do you now where they might be?
- 11 MR. WILLIAMS: No, I would imagine somewhere, wherever the
- 12 report is. I would guess that that's where they would be.
- 13 MR. BAILEY: Did you give a copy of the tape to Mr. Evanko?
- 14 MR. WILLIAMS: I don't recall. I don't recall whether we gave the
- 15 tapes to the commissioner and he gave them to somebody,
- 16 whether he kept them. Or I don't remember whether we gave the
- 17 tapes to our legal department. I just don't remember. I just
- 18 remember that we turned the tapes in.
- 19 MR. BAILEY: Did Mr. Wertz do a written copy of the ah? A
- written report like you did or did you guys cosign that thing?
- 21 MR. WILLIAMS: Yeah, we cosigned it.
- 22 MR. BAILEY: Who composed it?
- 23 MR. WILLIAMS: I believe I did.
- 4 MR. BAILEY: Ok, now did you make reference or any citations to

- any department regulations when you did your, uh, summary for
- 2 Mr. Evanko?
- 3 MR. WILLIAMS: No, basically all I did was, was, it was just a
- 4 very, 4 or 5 sentences telling him that we had conclude the
- administrative inquiry. A copy of all attachments are appended to
- 6 this from / to subject letter and then just turned it in like that.
- 7 And let the interviews and attachments speak for themselves. I
- 8 did not, ah, I did not cite any violations of any rules or
- 9 regulations or anything alone those lines.
- 10 MR, BAILEY: In doing your work did you note. Let me tell you
- where I'm going with this. You're going out, you're asking
- questions of people and one of the reasons I ask you about your
- own thoughts about these things is I want to find out what you're
- looking for. What you're going after as an investigator. Any
- 5 investigation to a certain degree is a subjective thing no matter
- 16 how you follow guidelines.
- 17 MR, WILLIAMS: This was not.
- 18 MR. BAILEY: I understand that. I mean I understand what your
- 19 role to be and your function to be, I understand that. And I also
- 20 understand your feelings about how you feel an officer is
- 21 supposed to report things. Agree or disagree doesn't matter. I
- 22 mean I understand what your viewpoint is. Ah, do you have a
- 23 recollection of doing any of this where you reached a conclusion
- 24 that Mr. Ober had violated a department regulation that at least

- 1 you were aware of?
- 2 MR. WILLIAMS: I can't ah, I can't recall. I'm sure that probably
- 3 crossed my mind but I can't recall anything that leaps to the
- 4 forefront. You know, I personally thought he used poor
- 5 judgement in not notifying the commissioner but it was a
- 6 subjective call. He did what he felt. He felt he had to do.
- 7 MR. BAILEY: I understand.
- END SIDE TWO (TAPE ONE) BEGIN TAPE TWO.
- 10 MR. WILLIAMS: And the only other thing that I can think of off
- the top of my head is that the portion of the inquiry that revealed
- that Captain Ober, I can't recall whether I had this right but I
- 13 think he had submitted a time sheet or something along that line
- saying that he was on an annual day the particular day the he
- interviewed or went to meet with the FBI. And subsequent to that
- he tried to change it and get that day back as I recall and say that
- 17 he was working that day. So.
- 18 MR. BAILEY: No. ah, ok, we'll deal with that. You don't offhand.
- Nothing leaps to mind about any regulation. He used poor
- judgment in your view. Ah, which means that he didn't do what
- 21 you would have done.
- 22 MR, WILLIAMS: That's right.
- 23 MR. BAILEY: It's a subjective thing. It's on his own. You know,

24 he had to do what he thought was right. Now when you went

61

- back did you personally hand this report in to Mr. Evanko?
- 2 MR.: WILLIAMS: Yes, I did. That's my recollection.
- 3 did
- 4 MR. BAILEY: Was there any give and take discussion at that time.
- 5 MR. WILLIAMS: I'm sure that we gave him what I would call a
- 6 Reader's Digest version of what had transpired or what our fact
- 7 finding mission or what we determined the facts to be and gave
- 8 him a report. That was basically it.
- 9 MR. BAILEY: Do you know if anyone ever told him that the
- inquiry into Captain Ober was not a proper thing to do?
- 11 MR. WILLIAMS: Do I know? No I don't know of
- 12 anybody.
- 13 MR. BAILEY: Did anyone ever indicate to you in the Pennsylvania
- 14 State Police that "this ain't proper?" You shouldn't be doing this.
- 15 MR. WILLIAMS: No.
- 16 MR. BAILEY: Ok. Now you did a write-up on your interview with

some

recall.

- 17 Mr. Hickes
- 18 MR. WILLIAMS: A write-up?
- 19 MR. BAILEY: Well, you reduced it to writing in
- 20 form.
- 21 MR. WILLIAMS: The secretary actually did it as I
- 22 MR. BAILEY: Then you taped all these things?
- 23 MR. WILLIAMS: Yes, I did.
- 4 MR. BAILEY: Ok. So there are transcripts on every one of these.

- 1 MR. WILLIAMS: Every one of the interviews, yes.
- 2 MR. BAILEY: Did you give those to Mr. Ober?
- 3 MR. WILLIAMS: No, I don't recall that I did.
- 4 MR. BAILEY: Ok, now but you did turn those tapes
- 5 right?
- 6 MR. WILLIAMS: Yes I did.
- 7 MR. BAILEY: Now sir, do you know of an administrative inquiry
- that was done into Mr. Hickes by somebody else? Now you
- 9 didn't do one but did somebody else?
- 10 MR. WILLIAMS: Not that I know. At least not that I'm aware of.
- 11 MR. BAILEY: So do you know whether Mr. Hickes and the
- 12 commissioner ever talked about this matter aside from the time
- 13 when Mr. Hickes and Mr. Ober told the commissioner about the
- 14 FBI probe?
- 15 MR. WILLIAMS: No I don't know if they did or not.
- 16 MR. BAILEY: Did Mr. Evanko indicate to you at any time that he
- 17 talked to Judge Freed, Louie Freed?
- 18 MR. WILLIAMS: I know there was discussion about the FBI but I
- 19 don't, I don't recall that.
- 20 MR. BAILEY: Did he ever indicate that he was going to talk to
- 21 Judge Freed, Louie Freed?
- 22 MR. WILLIAMS: Not that I recall.
- 23 MR. BAILEY: Do you know whether Mr. Evanko indicated he was
- 24 going to talk, I know that there was some talk about the Special

- Agent in Charge, did Mr. Evanko ever indicate that he talked to
- 2 anybody above the level of the Special Agent In Charge?
- 3 MR. WILLIAMS: Not to me he didn't.
- 4
- 5 (Loud background noise from outside)
- 7 MR. BAILEY: First is there's a train now there's a CH-47. Next
- 8 thing you know we'll have a couple of eagles coming over here.
- Ah, alright now, did any of your colleagues, not Mr. Evanko
- 10 now, any of your colleagues, Fellow State Police officers of any
- 11 rank indicate to you that the inquiry into Captain Ober was
- 12 perhaps not correct or perhaps something that should not be
- 13 done.
- 14 MR. WILLIAMS: I never recall anyone saying to me personally.
- 15 MR. BAILEY: Did you ever hear anybody make any comment like
- 16 that?
- 17 MR. WILLIAMS: No.
- 18 MR. BAILEY: Did you ever have any discussions with Mr.
- 19 Cory about the inquiry into Mr. Ober?
- 20 MR. WILLIAMS: I would never say no but I can't recall anything.
- 21 MR. BAILEY: Now according to your recollection, if I'm right in
- 22 remembering it. Mr. Westcott was at the meeting with Mr.
- 23 Evanko.
- 24 MR. WILLIAMS: At least initially.
 - 65

- 1 MR. BAILEY: At least initially
- 2 MR. WILLIAMS: I, I'm almost positive that we all walked into his
- 3 office at the same time. Whether he then left or not I don't recall.
- 4 MR. BAILEY: When you went in to turn the report in was it just
- 5 you and Mr. Wertz and the Commissioner?
- 6 MR. WILLIAMS: I believe so, yes.
- 7 MR. BAILEY: No one else was there at that time. Do you
- 8 remember?
- 9 MR. WILLIAMS: I don't recall.
- 10 MR. BAILEY: Did you give a copy of the report to Mr. Ober?
- 11 MR. WILLIAMS: No. I didn't personally.
- 12 MR. BAILEY: Did you ever have any understanding of the
- 13 interviews of the report would be given, it wasn't a report. It was
- 14 a one-page thing on your part, you had no recommendations, no
- 15 findings aside from the actual interviews. Why?
- 16 MR. WILLIAMS: Because it wasn't my place to make any
- 17 recommendations it was, I was just told to be on a fact finding
 18 mission which is what I did. And I felt that the best way to handle
- 19 that was let the interviews speak for themselves.
- MR. BAILEY: Do you how much, how much time Mr. Ober had to
- 21 prepare for the ah, for the interview.
- 22 MR. WILLIAMS: No, no I don't. Something in the back of mind
- 23 my mind is telling me that that morning he was called and asked
- 24 to report.
- 66

- MR. BAILEY: Why I asked you, and the reason why I asked you is
- 2 that I talked to Mr. Carr and Mr. Carr indicated that he's at work
- and he gets a call. We're gonna do this, come up here and
- 4 represent this guy. He doesn't know Mr. Ober. Mr. Ober doesn't
- 5 know him. Somebody, Mr. Carr says it was you called
- 6 MR. WILLIAMS: And it may have been
- 7 MR. BAILEY: No, I don't attach any significance to that aside from
- 8 how much advance notice Mr. Ober may have had to prepare for
- 9 this thing. To know what it was about. What was happening. So
- you, is it fair to say, Major. To the best of your knowledge Mr.
- Ober gets a phoné call and it's cold turkey. Come on in here and
- 12 he's gonna have this meeting.
- 13 MR. WILLIAMS: And that may be a true thing.
- 14 MR. BAILEY: Ok. Well you don't know. You certainly have,
- 15 there's no facts known to you that he was given any advance
- 16 notice.
- 17 MR. WILLIAMS: I don't recall. I know I never called him and said
- Darrell on such and such a date we're going to interview you.
- 19 And I don't recall Major Wertz ever saying that to me. So it's,
- 20 I'm only trying to deduce that the morning of we probably gave
- 21 him a call.
- 22 MR. BAILEY: Ok. Before you came down here today, if you did,
- 23 who did you talk to about this deposition? Syndi Guido?
- 4 MR. WILLIAMS: Yes.

- 1 MR. BAILEY: And what did you discuss? What did you talk
- 2 about?
- 3 MR. WILLIAMS: Um, we discussed some of the questions that
- 4 might be asked.
- 5 MR. BAILEY: I have no interest in that but what kind of responses

over

- 6 you gave basically.
- 7 MR. WILLIAMS: Basically what I'm telling you now.
- 8 MR. BAILEY: The same kind of things we're going
- 9 her now?
- 10 MR. WILLIAMS: Well we didn't go anywhere near the
- 11 detail that you're going into.
- 12 MR. BAILEY: Well she wouldn't know in advance what
- 13 I'm going to ask.
- 14 MR. WILLIAMS: No, exactly.
- 15 MR. BAILEY: But did you give her any documents?
- 16 MR. WILLIAMS: No, I did not.
- 17 MR. BAILEY; Did you refer to any notes, or documents, or tape
- 18 recordings or anything like that.
- 19 MR. WILLIAMS: She had a copy of the from / to subject letter and
- 20 I glanced at that very quickly. And I glanced at a few, I don't
- 21 recall all but I glanced at a few of the interviews. But other than
- 22 that I didn't. I didn't read anything line by line.
- 23 MR. BAILEY: And study it. You didn't study it?
- MR. WILLIAMS: That's why I'm not familiar with the dates and

- 1 the times and things
- 2 MR. BAILEY: Alright, ah, Tom did Captain Ober ask you outright
- 3 what regulation, what policy did I violate?
- 4 MR. WILLIAMS: I can't say that he didn't. I can't say that he did. I
- 5 honestly, I just don't recall.
- MR. BAILEY: And as you sit here today aside from gathering your
- 7 facts you don't have a recollection, nothing comes to your mind,
- realizing or coming upon a violation of any department
- 9 regulation in any of this which I guess would be pretty much
- 10 limited to Captain Ober and Mr. Hickes, Colonel Hickes, right?
- 11 MR. WILLIAMS: Well other than the fact that I told you on the
- 12 report that he had changed that and very technically that could be
- 13 considered a falsification of a report.
- 14 MR. BAILEY: Well why didn't you?
- 5 MR. WILLIAMS: It wasn't up to me to make any recommendations
- or impose any discipline. That would be up to the Commissioner
- 17 to do.
- 18 MR. BAILEY: Ok. Well, do you know whether the Commissioner
- 19 did that
- 20 MR. WILLIAMS: I have no idea. After I turned that report in to
- 21 him I had no other conversations with him.
- 22 MR. BAILEY: Do you think if there had been a violation there he
- 23 would have done that?
- 24 MR. WILLIAMS: I don't know what he would have done.

- 1 MR. BAILEY: Alright. Did you interview Lt. John Brown?
- 2 MR. WILLIAMS: I don't recall that I did.
- 3 MR. BAILEY: How about Ron Heligas? Sergeant Heligas?
- 4 MR. WILLIAMS: I don't recall his name.
- 5 MR. BAILEY: Did you and Mr. Werts do all your interviews
- 6 together or did you do some and he do some?
- 7 MR. WILLIAMS: I think that with the exception of the time that I
- 8 went out to Finley we did them all together. And I went out to
- 9 Finley because as I recollect he was tied up he couldn't make it
- the particular day that we had set up. So I went out by myself.
- 11 MR. BAILEY: Aside from talking to Mr. Cush on that, or whoever
- 12 you talked to. Did you talk to any other FBI people, any other
- 13 FBI people other than Mr. Cush?
- 14 MR. WILLIAMS: I'm not sure with his supervisor or something but
- it would have been, you know. I can't even recollect what it
- 16 would be about.
- 17 MR. BAILEY: Where's Mr. Cush now?
- 18 MR. WILLIAMS: I don't know.
- 19 MR. BAILEY: you don't know whether he was transferred do you?
- 20 MR. WILLIAMS: No I don't.
- 21 MR. BAILEY: Did he do anything wrong in your view of what the

- 22 responsibility of what a professional law enforcement officer
- 23 would do?
- MR. WILLIAMS: Did he do anything? I wasn't privy to his

- investigation. The only thing I know he did was call Darrell Ober
- 2 and advise him of the fact that there was the possibility of a
- 3 Trooper and / or a Lt. Colonel either accepting money or trying
- 4 to manipulate the system of cadet processing.
- 5 MR. BAILEY: Now did you talk to Mr. Cush after you
- 6 talked to Mr. Ober or before?
- 7 MR. WILLIAMS: I have to look at dates on the interviews. I think I
- 8 talked to Mr. Cush initially before and the I had a subsequent
- 9 conversation with him but I don't recall the date on that.
- 10 MR. BAILEY: Let me tell you why I ask. If Mr. Ober told you the
- 11 FBI said it was in the higher-ups or mentioned the governor's
 12 office, alright. Then you would have asked Mr. Cush about that
- 13 to ascertain if Mr. Ober was being accurate, cause that would be
- 14 an important point, right?
- 15 MR. WILLIAMS: I would think so.
- 16 MR. BAILEY: So, if we look at those interviews in time sequence
- 17 they should reveal an interest into asking those sort of questions,
- 18 right? I should.
- 19 MR. WILLIAMS: I don't know. I don't know what's in those
- 20 interviews.
- 21 MR. BAILEY: But you do remember that this Mr. Cush said there
- 22 was a trooper or whatever and a Lt. Colonel. You remember that.
- But that's what Mr. Cush indicated.
- 4 MR. WILLIAMS: I don't, I don't remember necessarily. I think I

- said, I spoke that a Lt. Colonel was mentioned sometime during
- 2 this inquiry but I didn't remember exactly when it was
- 3 mentioned.
- 4 MR. BAILEY: You don't remember Mr. Ober mentioning higher-
- 5 ups and the governor's office do you?
- 6 MR. WILLIAMS: I think I said before that may have been
- 7 mentioned but I don't recall it off hand. I would have to look at
- 8 the transcript. That would reveal whether he said that or not.
- MR. BAILEY: Well, you didn't tell Mr. Evanko did you about
 anybody whether it was Mr. Ober, whether it was an informer,
- whether it was Mr. Cush, whether it was Special Agent in
- 12 Charge, whether it was Louie Freed. You didn't mention to Mr.
- 13 Evanko that there was any mention of the governor's office or
 - 4 anything like that?
- 15 MR. WILLIAMS: I don't recall that.
- 16 MR. BAILEY: No, I'm not suggesting sir that you did. Don't read
- 17 that into
- 18 MR. WILLIAMS: And I'm not saying that I didn't cause I don't
- 19 remember that particular part. It's been long time.
- 20 MR. BAILEY: Well when I asked you questions earlier you seemed
- 21 to be very quick to respond to me that the FBI agent, Mr. Cush,
- 22 had not indicated any desire or expression or interest in
- 3 confidentiality then I asked you what confidentiality meant.
- 4 MR. WILLIAMS: That's because on the follow-up phone call to

- him I specifically asked him questions that I wanted answered.
- And I specifically remember calling him to ask him had he
- expressed to Captain Ober the confidentiality aspect and he said
- no. Now there were some other specific questions that I asked
- that I don't recall here today. But that I do because that was a big
- part of what this inquiry was about,
- MR. BAILEY: If Mr. Cush had called you even if he asked for 7
- 8 confidentiality you would have reported that information that Mr.
- Evanko anyway. You told us that.
- MR. WILLIAMS: Yes, I would and I think that's exactly what 10
- 11 Darrell did. He reported it up also.
- MR. BAILEY: To Mr. Hickes. See he had this concern or a burden. 12
- You're sort of in a bind, in a sense. Right, I mean from the
- standpoint of it's your work ethic whether it's your loyalty, 14
- 15 whether it's personal, whether it's legal. Whatever it is, it's a
- 16 tough place to be in. That goes without question. Now have you
- 17 ever punished anyone who was inferior in your command, below
- 18 you in your chain of command? Because they didn't tell you
- something and you thought they should have told you. 19
- 20 MR. WILLIAMS: I can't, I can't say that I ever-instituted formal
- discipline but I can say that I have become upset when they 21
- didn't do that. I let them know that. 22
- MR. BAILEY: What did you do to them. 23
- MR. WILLIAMS: I just called them in and counseled them

- concerning it and told them that ah, this would be a counseling
- session concerning it and if it happened again I would consider
- formal discipline.
- MR. BAILEY: Ok. Now have you ever done that when there wasn't
- a basis for formal discipline?
- MR. WILLIAMS: Well, it would be, it would be, if you're saying 6
- that there's quote no regulations to keep your superiors informed
- then I probably have. You know
- MR. BAILEY: But not intentionally, not to hurt somebody. 9
- MR. WILLIAMS: No. 10
- MR. BAILEY: Did you ever carry that forward and stop somebody
- 12 from being promoted or transferred because you didn't like
- them? 13
- MR. WILLIAMS: Absolutely not.
- MR. BAILEY: Why not Tom, why didn't you? 15
- MR. WILLIAMS: Because I don't think it's fair to do that to a
- person. If it's a mistake in judgement that's one thing, if it's a...I 17
- always categorize things as "of sins of the heart and sins of the 18
- head." And if something was a sin of the heart.
- MR. BAILEY: I think I'll use that myself. I like
- MR. WILLIAMS: If something was a sin of the heart then I would
- 22 go full tilt. If something was a mistake and something I didn't
- hold that against a person. Now if they repeated it over and over I 23
- 24 might

- 1 MR. BAILEY: What did you learn about this that indicated it was a
- sin of the heart on the part of Mr. Ober?
- MR. WILLIAMS: That was a sin of the heart?
- MR. BAILEY: Yeah.
- MR. WILLIAMS: I think he purposely changed or tried to, to get
- that date back.
- MR. BAILEY: We'll talk about that. But aside from that we're
- talking about the issue of informing somebody.
- MR. WILLIAMS: Informing somebody. Like I said I think AR425
- speaks to that. At least I believe it does. And if anybody should 10
- 11 that AR425 it should be a Captain in Internal Affairs.
- 12 MR. BAILEY: Well that was you called it an error in judgement
- 13 before. Are you now changing what you said
- MR. WILLIAMS: No because
- MR. BAILEY: No, let me finish my question. What Mr. Ober did
- was a thing of the heart, one of these errors of the heart 16
- MR. WILLIAMS: I don't know as I would quote it a sin of the 17
- heart. I guess it was, I said before bad judgment. And I think he
- thought out the whole situation before he just picked up the 19
- MR. BAILEY: Do you view it as a matter of good politics to inform
- 22 you superiors if you learn they're being investigated for public
- 23 corruption. I mean is it good job politics? Or is that good police
- practice?

- MR. WILLIAMS: I didn't say I would inform somebody of whether
- they were investigate. I didn't say that,
- MR. BAILEY: But you said if you heard something generally you
- would inform them.
- MR. WILLIAMS: You were talking in terms of Trooper John Doe
 - is being investigated by the FBI. I would certainly inform my
- bosses about that. If they said my boss was being investigated I
- never said I would inform that person.
- MR. BAILEY: I agree with you. You didn't say that. The question
- is if the FBI comes to you and says we're looking into the upper 10
- echelons of the State Police because we believe they may be 11 12
- involved in drug running you're gonna go and tell the person? MR. WILLIAMS: The first thing I would ask them is who is the 13
- 14 upper echelon, and I think that's a fair question to ask them. And
- 15
- they would give me an answer.
- MR. BAILEY: They would give me an answer. 16
- MR. WILLIAMS: Well sure I would assume that if they are willing
- to call me and tell me about the investigation in general they're 18
- gonna tell me about who they were investigating. 19
- MR. BAILEY: That's Ok. And it's fair enough. Now what if it's
- 21 just a suspicion Tom, and it's just a we believe, or we think, or
- we're concerned that it might be. What so you do in that case, 22
- MR. WILLIAMS: I don't know. That's a hypothetical question that

- I never. I never encountered.
- MR. BAILEY: Well you never encountered this did you? You
- never encountered the other questions I asked did you?
- MR. WILLIAMS: Somewhat sure.
- MR. BAILEY: Alright. (sigh) I assume if you got a grand jury
- subpoena you're gonna obey that. Do what that says. If
- somebody says you can't reveal or talk about that stuff you know
- you can't do that right? Then that's a matter of law there.
- MR. WILLIAMS: Sure.
- MR. BAILEY: What was a, what regulations govern the nature, the 10
- 11 parameters, the nature and the extent of an administrative
- 12
- 13 MR. WILLIAMS: I don't believe there are any.
- 14 MR. BAILEY: Ah, does that term appear anywhere in State Police
- 15 regulations.
- MR. WILLIAMS: Not that I'm aware of.
- MR. BAILEY: (long pause) Did you ever transfer someone because 17
- you didn't like them?
- MR. WILLIAMS: No. 19
- MR. BAILEY: Did you ever transfer somebody because you didn't
- like what they did?
- MR. WILLIAMS: Yes. 22
- MR. BAILEY: And in that situation or situations if there was more
- than one, is that because the person had violated some State

- Police practice of policy or regulation?
- MR. WILLIAMS: Yeah, well, the one I'm thinking of in particular
- was a sergeant who was at a station, who, I had put an order out
- saying thus and so would be done. And he badmouthed that order
- in front of his troops saying this is ridiculous and we're not going
- to do it. I transferred him for several other reasons too because he
- had been warned
- three or four different times, and when he did this I felt he was not
- serving me the way he needed to serve me and I removed him
- 10 from his command
- MR. BAILEY: Yeah but isn't the issue there a matter of serving
- you. Isn't the matter there of him not serving the State Police? 12
- MR. WILLIAMS: That's correct.
- MR. BAILEY: That's not personal. Let's face it. That's 14
- insubordinate. There's sixty ways to take a hill bet the platoon
- leader says you do it way 47 and you get behind it heart and soul. 16
- 17 That's what you're saying.
- MR. WILLIAMS: That's correct.
- MR. BAILEY: So what he did, I don't have any problem. That's 19
- insubordination. That's trying to tell people here you're
- conveying an order from a superior and you're encouraging folks 21
- 22 not to respond properly to those orders.
- MR, WILLIAMS: That's what I believe.
- MR. BAILEY: Ok. And that's fine.

- MR. WILLIAMS: But I removed him from his command and I
- transferred him but I didn't quote 'institute a BPR' and seek
- formal punishment. Because he serves at my pleasure in the
- troop. So I have the right that I can remove somebody.
- MR. BAILEY: You have limited rights in there in terms of your
- command to do those kind of things.
- MR. WILLIAMS: So I removed him.
- MR. BAILEY: Ah, did this individual did he grieve that?
- MR. WILLIAMS: No, he didn't because he knew he was out and
- MR. BAILEY: Ok, and cause he was wrong he went along with
- that. Now is that a error not of the heart but of the mind?
- MR. WILLIAMS: No, I thought it was an error of the heart.
- MR. BAILEY: Ok. So it wasn't an honest difference of opinion or 14
- 15 judgement it was an improper perhaps even vindictive an
- irresponsible response to a bona fide order from a superior 16
- officer Am I right? 17
- MR. WILLIAMS: To me it was.
- MR. BAILEY: Yes sir. Alright. Ah, Mr. Ober's lawsuit, should you
- approve that, Mr. Ober's lawsuit, Mr. Evanko, I'm gonna ask you 20
- 21 just a series of very quick questions here. Mr. Evanko is a
- defendant in the lawsuit and Mr. Mark Campbell. You don't
- know Mr. Mark Campbell do you? 23
- MR. WILLIAMS: I know who he is but I never sat down and had a

- discussion with him or anything,
- MR. BAILEY: And you never discussed anything with him about
- this. Mr. Ober or anything in this case?
- MR. WILLIAMS: NO
- MR. BAILEY: You indicate in response to some earlier questions
- that you may have discussed Mr. Ober with Tom Corey. I may be
- mistaken about that.
- MR. WILLIAMS: Yeah, I said there was a possibility we discussed
- some things but I don't have any clear recollection of it. It's
- entirely possible. 10
- MR. BAILEY: Alright. Now, sir, you indicated that Mr. Westcott
- 12 has called you about Mr. Ober, any other discussions at any time
- 13 you've had with Mr. Westcott about Mr. Ober?
- MR. WILLIAMS: I'm sure we has some along the line but it was
- 1.5 nothing that "Oh I found this out," or and he did this wrong or he

that

- did that wrong. It was just, you know, how are you doing in the 16
- investigation. Well, we still have so on and so on to interview 17
- and things of that nature. MR. BAILEY: Do you know of any other investigations
- were done into Captain Ober?
- 21 MR. WILLIAMS: No.

- MR. BAILEY: Is it fair to say you don't know of any BPRs or any
- criminal investigations?
- MR. WILLIAMS: Not that I'm aware of.

- 1 MR. BAILEY: No of any other kind of, for lack of a better term
- 2 administrative inquiries that were done to Mr. Ober?
- MR. WILLIAMS: No, with the exception of the one we did. Myself
- 4 and Major Wertz.
- 5 MR. BAILEY: How about Mr. Conley?
- 6 MR. WILLIAMS: Mr. Conley? Mr. Hawthorne Conley?
- 7 MR. BAILEY: Mr. Hawthorne Conley.
- MR. WILLIAMS: Do I know of any investigations on him?
- 9 MR. BAILEY: No, discussions, I'm sorry. Let me go back to the
- original question. I sort of lost it. How about Mr. Conley about
- 11 Mr. Ober? For example was he interviewed in the administrative
- 12 inquiry?
- 13 MR. WILLIAMS: Yes, he was.
- 14 MR. BAILEY: Aside from the interview and the administrative
- 15 inquiry did you have any conversations with Mr. Conley about
- 16 Mr. Ober?
- 17 MR. WILLIAMS: I'm reluctant to say no because during the course
- of everyday business you run into somebody and you just talk
- 19 about different things. There was nothing that was ever planned
- 20 or I had a mission to give him certain information or something. I
- 21 just don't recall any.
- 22 MR. BAILEY: Ok. Let me step out with Mr. Ober.
- 23 Door closing.
- 24 Some unrelated conversation going on.

- Mr. Ober to put in for that leave day?
- 2 MR. WILLIAMS: And again here something is telling me that that
- answer is yes but I'd have to review that. And I'm just trying to...
- 4 MR. BAILEY: Not to be facetious but it wouldn't have been a
- 5 mistake of the heart for Mr. Ober to follow Mr. Hickes
- 6 instructions on that issue either. Not to be funny is that?
- 7 MR. WILLIAMS: Ah, yeah.
- 8 MR. BAILEY; Without knowing more it's hard for you
- 9 say.
- 10 MR. WILLIAMS: It, it is. Because, I now, I can see where you're
- 11 coming from but I can also see that if somebody above me told
- 12 me to do something that I considered wrong, my ethical standard
- 13 would not allow me to do that.
- 14 MR. BAILEY: That's right. You know how you can't conceive of
- 15 how Mr. Evanko would do something there not a centila of doubt
- in mind in my mind about the integrity of my client. We have a
- 17 commitment made.
- 18 MR. WILLIAMS: I have always thought that and I'm not saying
- 19 this because I'm on camera or anything else. I always thought
- very highly of Darrell. He's a very bright, articulate young man.
- MR. BAILEY: I know you do and I now you voiced those opinions
- 22 before and I deeply appreciate it. Sir, I have no more questions
- 23 for you, I'm finished. I thank you very much. I know you are
- retired and very much appreciate your coming here today.

- 2 MR. BAILEY: Major Williams I have nothing further at this time
- 3 sir and as far as I'm concerned you deposition is concluded. I
- 4 may have some requests to make of you. Let me just do this in a
- 5 formal way right now before Syndi takes over. If you have any
- documents, reports or records which you have taken with you
- from the State Police, ah, maybe you can tell me right now. Do
- you have anything that would relate to this?
- 9 MR. WILLIAMS: Not that, not that I recall. Syndi asked me that
- this morning and I said that when I was retiring and moving a lot
- of the personal notes and everything I had over the years, I just
- 12 got rid of it. I didn't think I was going to need it anymore.
- 13 MR. BAILEY: As long as the State Police have it.
- 14 MR. WILLIAMS: I think it's shredded if there was anything.
- 15 MR. BAILEY: Well, we'll see. Ah, the, well just a little tiny, you
- 16 did a couple of times you sort of returned to raise persistently
- 17 about this day which I'm aware of and know how to deal with
- because I positively can show there's actually been no wrong-
- 19 doing or intention of wrong-doing on behalf of my client for who
- 20 I have absolutely only the greatest respect. Did you question Mr.
- 21 Hickes about that leave day? Remember.
- 22 MR. WILLIAMS: No I can't. Something keeps telling me yes but
- 23 I'd have to review that transcript.
- 24 MR. BAILEY: Well do you know if you asked Mr. Hickes if he told

82

- MR. WILLIAMS: Not a problem.
- 2 Mr. MARCECA: It's now 16:05 and this deposition is now ended.
 - END OF TAPE

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT IF PENNSYLVANIA

DARRELL G. OBER

Plaintiff VS.

CIVILAC IN ALA W

1:DV-01-0084

(JUDGE CALDWELL) JURY TRIAL DEMANDED

PAUL EVANKO, MARK CAMPBELL, THOMAS COURY, JOSEPH WESTCOTT, HAWTHORNE CONLEY

JOANNA REYNOLDS and SYNDI GUIDO

Defendants

PLACE:

MAIN CAPITAL

HARRISBURG, PA 17101

PROCEEDINGS:

VIDEO DEPOSITION OF Mark Cambel CEASON'S NAME OCTOBER 10, 2001

DATE:

APPEARANCES For the Plaintiff:

Donald Bailey, Esquire 4311 North 6th Street Harrisburg, PA 17110

Defendant:

Syndi Guido, Esquire 333 Market Stree Harrisburg, PA 17101

REPORTER-Certainly. Would you raise your right hand please? Do you swear the testimony you are about to give in this matter will be the truth, the

whole truth, so help you God?

MR. CAMPBELL: 1 do

5 MR BAILEY

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2

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Ah, Mr. Campbell as I indicated earlier we met very briefly. My name is Don Bailey. I am an attorney. I represent the plaintiff in this matter, Darrell Ober. Darrell is with me and is sitting to my left. This is a video deposition, so, if you at any time need to get up of leave your chair, sh, we'll suspend the video at that point and that way we'll have a complete and total record. During the deposition I'll be asking you various questions ah, it's important that you, ah, I probably don't need to tell you these things. I don't want you to take them as condescending but it's a process I need to go through. Um, I'll be asking you various questions at different times. And, of course it's important particularly because we are taking this record by stenographic means, especially, that you let a little time transpire hetween when you respond, when I ask a question and you respond. Mark, if I at any time step on the toes of your answer, and I assure you, I'll be the one at fault, it's not going to be you. Ah, make sure you correct me. The two fine lawyers there I'm sure are gonna make sure they remind me when I do something they feel is wrong or an error. But, you know, you're the only one who knows, in your mind when you've completed an answer and it is very important that you

answer completely and fully. Ah, the law requires not only a truthful

Jaski Campbell MR. BAILEY: What we'll do as soon as, Tony of the State Police, when the young 2 lady is positioned and ready to, we will begin the video deposition. And, 3 uh, we'll go around the table, do a voice check and we'll go from there. 4 Do I need the microphone a little closer to Mark or not? REPORTER: 5 MR. BAILEY: You don't need that believe me. Announce to everybody the video 6 MR. MARCECA: Good afternoon. My name is Anthony Marceca and my address is 2219 Dixie Drive, York, Pennsylvania and I'm contracted by TR Video to conduct this deposition on behalf of the plaintiff. Ah, this matter is 9 docketed 1:CV-01-0084. In the United States District Court of the 10 Middle District of Pennsylvania. The caption is Darrel A Ober 11 MR. OBER: G Ober. 12 MR. MARCECA: Correction on that, Darrel G. Ober versus Paul Evanko et al. Ah, 13 could I take a sound check? 14 MR. BAILEY: Yeah, I'll begin. My name is Don Bailey. I am the attorney for 15 plaintiff. Ah, Mark we can go with you. 16 MR. BAILEY: Mark Campbell 17 MR. BAILEY: Syndi? 18 MS.GUIDO: Syndi Guido. I'm counsel to the defendants. 19 MS. REYNOLDS: Joanna Reynolds. Counsel for defendants, Pennsylvania State Police. 20 MR. BAILEY: Ok. Ladies and Gentlemen, as I said this is the plaintiff's deposition. 21 The video is now running. Tony, you may want to announce the time 22

MR. BAILEY:

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Miss, would you administer the oath, please.

MR. MARCECA: The tape is now running at 14:08 on 10 October.

have the court reporter swear in the witness.

and we'll have the court reporter, since they want a transcript we'll

Which I'm sure you know but it also requires a complete and full answer. Now form time to time and my instructions to depones are a little different than most attorneys. I have no interest in any kind of trick questions, smoking gun question or anything like that and I mean that sincerely. Therefore, if at any time during the deposition you are curious about where I'm going with a line of questionings, question, a line of question or with a particular question I want you to feel free to ask me. I'll give you an offer. I'll tell you where I'm coming from, what I mean by a question, ah, etc. The other thing is, you know, you do have to keep your voice up. You do have to be verbal in your responses. You can't gesticulate. With that said, ah, before we begin there's just a couple chores that the attorneys have to clear up. I would ask that...Do you have any questions of me before we...

15 MR. CAMPBELL: No sir

> MR. BAILEY: To opposing counsel I would assume that the usual stipulations, objections except as to the form of the question be reserved until tie of trial. Is that accentable?

MS GUIDO: That's what we plan to do.

MR. BAILEY:

Ok. If everyone's ready we can begin. Ah, one last thing, the other thing I don't object to is if at any time you want to stop and talk to your attorneys or go outside I want you to feel free ah, to do that. Normally, you're not supposed to talk during a deposition but, as I said before, I really don't mind. So if you feel some need, you have

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ì		to suspend like, don't be afraid to ask. Mark, for the record could
2	-	you state your full name?
3	MR. CAMPBEI	L: Mark Richard Campbell, Junior.
4	MR.BAILEY:	How are you employed?
. 5	A:	Currently, Chief of Staff to Governor Mark Schweiker.
6	Q:	And, ah, I realize there's been a change of leadership with Mr.
7	-	Ridge, Governor Ridge going to Washington but, ah, is it fair to say
8	j	that you previously had worked for Mr. Ridge?
9	A:	I was most recently, before this, chief of Staff to Governor Ridge.
10	Q:	And how long were you Chief of Staff to Governor Ridge?
11	A:	I've been Chief of Staff since January 2001.
12	Q:	Ok. Now, very briefly, what does Chief of Staff do?
13	A:	Chief of Staff serves to, I think as, at least with Governor Ridge and
14		Governor Schweiker to be the
15	Q:	For the sake of just helping you, I think we probably, can do, most, is
16		it fair to say, we can all agree that the events complained of in the
17		complaint all occurred under Governor Ridge? Ok, during his tenure.
18	A:	Sure.
19	Q:	There's no reason to get into Governor Sweiker at all.
20	A:	Ok.
21	Q:	I resolved the fact that you work for him.
22	A:	Yeah.
23	MR. BAILEY:	But it just saves time. Go ahead.
24	A:	Um, primarily served as the governor's liaison to all of his cabinet
25		agencies and to his senior staff and helped ensure that the governor's

1		agenda was, was developed, enacted, uh, and initiated. And that
2		required me to work with, ah, all of our cabinet officers, our senior
3		staff as I mentioned earlier and, um, helped to oversee a 21 billion
4		dollar, 80 thousand employee undertaking.
5	Q:	If, in, sorting through some of the adjectives, descriptive adjectives,
6		you used, is it fair to say your job pretty much amounted to getting
7		things done?
8	A:	Sure.
9	Q:	Facilitating or seeing that policy directives and that sort of thing
10	1	were carried out?
11	A:	Yes sir.
12	Q:	Are you familiar with the complaint?
13	A:	Um, I am.
14	Q:	Have you been able to review it? Review the complaint?
15	A:	I did, uh, on one occasion. Yes.
16	Q:	Now, in the complaint, um the, do you know where, let me. The
17		complaint was filed in Harrisburg; this is the amended complaint, on
18		May 2, 2001. Maybe opposing counsel can help me. When was the
19		original complaint filed? Was it in?
20	Male voice:	January 16th.
21	MR. BAILEY:	January 16th of 2001. Is that consistent with your?If you remember.
22	MR. CAMPBELL:	Uh, I don't remember the dates.
23	Q:	Mark, when did you first become aware of it?
24	- A:	Of the complaint?
25	MR. BAILEY:	Yes sir.
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I	A:	Probably, and taking for granted the January filing date, probably
2	.	shortly after it was filed.
3	Q:	How did you become aware of it?
4	A:	I believe through our office of General Counsel.
5	MR. BAILEY:	Alright. One thing I, uh, want to point out to you. I'm sure you've
6		already been advised, but if you haven't, from time to time if I ask a
7		question that, I don't want to infringe on attorney/client privilege, if I
8	1	ask a question where you have discussed something in the presence
9		of your counsel privately, um, that's called privilege. You don't have
10		to respond. Are you an attorney by trade?
11	A:	No, I'm not.
12	MR. BAILEY:	Then I'll make sure I double do these things. So you're not to
13		respond to those. If you have any questions ask your counsel. And if
14		she has a concern I'm sure she's gonna speak right up. Is it fair to
15		say in a given week, um, during the time, during let's say the year
16		2000, the year 2001 that you would meet with different heads of
17		various agencies of government that come under the governor's,
18		under the governor's jurisdiction?
19	A:	Yes. ·
20	Q:	And you pretty much did that on a regular basis?
21	A:	Yes.
22	Q:	Do you keep any kind of calendar or schedule?
23	A:	I have a schedule via my computer. So, yes.
24	Q:	What kind of software do you use? I'm sure it's a windows operating
25	A:	Microsoft. I forget the name of the product.
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1	Q:	Is it generic to the governors office or do you have a private
2		computer that you keep these things on?
3	A:	No, it's the computer here in the governor's office.
- 4	Q;	And do you have a secretary, a private secretary that works only for
5		you?
6	A:	Um, Mary, yes I do.
7	Q:	And what is her name?
8	A:	Mary Quigley.
9	Q:	How long has she been in that position?
10	A:	Um. Mary has been my secretary for probably, um, I don't recall
11		exactly but it's probably been the last two years approximately.
12	Q:	Does she act as a receptionist for you, for receiving incoming calls
13		and helping you schedule appointments?
14	A:	Yes.
15	Q:	Does she make, make any decisions to schedule for you?
16	A:	She will at times,
17	Q:	You're, I assume the final arbiter of what schedule you keep?
18	A:	Umm.
19	MR. BAILEY:	Well, maybe the governor would say
20	A:	Yeah, Yeah, Right, Yeah, That would be true.
21		
22		[LAUGHTER]
23		
24	MR. BAILEY:	Ok. Sure. Now, Mark, I'm going to be shifting gears a little bit here
25		•

I		and I want to ask you some more, some more questions that are
2		specific to the complaint. Do you know the Pennsylvania State
3		Police Commissioner Mark, Paul Evanko?
4	Q:	Do I know him? Yes.
5	A:	Since, probably somewhere around the beginning of 1995.
6	Q:	And how did you occasion to first meet Paul Evanko?
7	A:	One of my initial tasks with the governor was to interview potential
8		cabinet secretaries for several agencies, the State Police being one of
9		those agencies. I was a member of a panel that interviewed various
10		candidates and made recommendations to the governor.
11	Q:	Who else was on that panel?
12	A:	Ah, Lieutenant Governor Schweiker and Tom Corbett, and ah. I
13		believe there was a fourth member but I don't recall right now who
14		that would have been.
15	Q:	Now, Mark, uh, do you have a recollection of who recommended
16		Paul Evanko for his position?
17	A:	Colonel Evanko's name was first raised with me and suggested to me
18		by Mike Moreno.
19	Q:	Anyone else that you can remember?
20	A:	No sir.
21	Q:	Did you meet and interview Mr. Evanko?
22	A:	Ah, he came before that group that I mentioned before and was
23		interviewed by the panel. Yes,
24	Q:	Ok. Now, I'm gonna switch gears on you again. Going a little
25		different direction here. Do you have any kind of a reporting, kind of

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ì		a system? Let me explain where I'm coming from on that. Do you have any
2		kind of operating procedure? SOP's as it's commonly referred to where, ah,
3	l	cabinet officers either report, communicate information to the governor? Or
4		as Chief of 3221, you know, which is in most administrations I've been
5		familiar with. A Chief of Staff is an alter ego and again, in my experience,
6		probably the next most powerful man in the government system, or woman.
7	1	I've known some women that have held those kind of positions also. I'm
8		asking you if there was any kind of procedure set up where there was a
_		standard way to report or supply information?
9	A:	The only regularly scheduled communication between the governor
10		and the members of his cabinet were through bi-weekly reports,
11		written reports that the cabinet officers would provide to the
12		governor. Other than that the cabinet officers would bring matters to
13		the governor's attention on an 'as needed' basis.
14	Q:	Now, ah, isn't it so that there is some type of a cabinet meeting or
15	İ	procedure that deals with personnel matters?
16	A:	Not that I'm aware of. No.
17	Q:	Well, um, take an issue, like on the behalf of a state employee for
18		extended leave. Any issues like that that ever come to the level of a
19	ĺ	cabinet position where they have to be signed off on, etc.? that you
20		know of.
21	A:	No, not that I'm aware of.
22	Q:	Did you during the period of time complained of in the complaint
23	·	hold cabinet level meetings with either top staff or cabinet level
24		officials during the period of time that the matters complained of in
25		and the first of the same and the samplaned of the

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I		the complaint at a regularly scheduled time?
2	A:	No.
3	Q:	Pennsylvania State Police Commissioner. Is that cabinet level? Or is
4		it sub-cabinet level?
5	A:	That would be cabinet level.
6	Q:	Now, Pennsylvania State Police Commissioner, and it's Mr. Evanko,
7		in this case. Let's go back to square one. How often would you meet
8		with him? On, let's say a monthly, bi-weekly or yearly basis?
9	A:	We didn't have a regularly scheduled series of meetings. I would
10		meet with the colonel as I would meet with other cabinet officers on
11		an 'as needed' basis.
12	Q:	So everything was ad hoc. That's the way you did things. Was there
13	,	a regular meeting with the governor?
14	A:	No.
15	Q:	Lieutenant Governor?
16	A:	Not that I'm aware of.
17	Q:	Legislative leaders?
18	A:	Not that I'm aware of.
19	Q:	Ok. Um, the chain of command for wants of a betterno pun
20		intended, incidentally in this case. Ah, but the chain of command
21		would essentially be the governor, with your assistance naturally, but
22		the governor to the cabinet level official, right?
23	A:	Yes sir.
24	Q:	Is there any procedure in State government known to you,
25	.b	Pennsylvania State Government, known to you, where investigations

		
		,
1		by other than state authorities are to be reported? Do you understand
2		that question?
3	A:	Sure.
4	Q:	Let me give you a hypothetical one. The FBI is investigating
5		something and uh, somebody out there gets wind of it. Hears of it.
6		They're looking into some aspect or function of state government. Is
7		there any policy, was there any policy in state government to report
8		that information?
9	A:	No. Not that I'm aware of.
10	Q:	Was there any, now there were no written or informal policy 'Hey let
11		me know the FBI is checking into this or that we should know about
12		it'?
13	A:	No.
14	Q:	And by the way, please accept the, again for what it's worth. There is
15		no implication that that's improper. It's our desire to know what's
16		going on out there. Ok. Now there is no particular policy that has to
17		do with reporting, a reporting requirement, no regulation. Do you
18		know of any such regulations in the Pennsylvania State Police?
19	A:	No, I do not. Not aware.
20	Q:	Uh, have you ever had occasion to consider, um, regulations or
21		potential regulations that would require an employee to report
22		knowledge of investigatory activities? Do you understand that
23		question?
24	MR. CAMPBELL:	Have I been aware of any need?
25	MR. BAILEY:	Yes, sir. I'm sorry. Let me rephrase that, it was very awkward. Uh,

		<u> </u>
I		do you have knowledge of any considerations, meetings or
2		discussions in state government about a policy where one would
3		encourage, or one of the officials in state government is supposed to
4		report knowledge of investigatory activity?
5	A:	Do I have awareness of any requirement? No, I do not.
6	Q:	Were the any, did you ever have any discussions to that effect?
7	A:	No.
8	Q:	Do you know of any directions or discussions that have been held by
9		anybody at a cabinet level about reporting investigatory activity?
10	A: -	No:
11	Q:	Did you, at some time have a meeting with Paul Evanko where, a
12	,	Mr. Hykus was discussed?
13	. A:	Had several meetings with the colonel during the selection process
14		for a new deputy commission during which time Colonel Hykus was
15		one of the candidates for that position.
16	Q:	Do you have a recollection of Mr.Evanko's position on the selection
17		of Mr. Hykus?
18	A:	Um there were several candidates who were considered and as I
19		recall, um, the colonel considered various attributes of all the
20		candidates and ultimately selected Colonel Hykus.
21	Q:	So, it's your testimony here today, to the best of your knowledge that
22		Mr. Evanko chose Mr. Hykus for his position?
23	A:	Yes sir.
24	Q:	Alright. Now, um, did you ever have occasion to discuss any FBI
25		investigations with Mr. Evanko?

ı	A:	No.
2	Q:	Um, is it your testimony here today that you, that Mr. Evanko never
3		informed you of an FBI investigation into the affairs of either the
4		Pennsylvania State Police or certain Pennsylvania State Police
5		officers?
6	A:	Colonel Evanko did inform me, um, in approximately and I know
7		this from having read the complaint, in approximately May of 1999
8		of a what I believe was termed to be a closed FBI investigation, um,
9		regarding activity at the Pennsylvania State Police and potentially in
10		the governors office as well.
11	Q:	Ok. Um, Mark, so you have a recollection of what the substance of
12		that investigation was, what Mr. Evanko. Just tell us what you
13		remember Mr. Evanko told you.
14	A:	Sure. As I recall, the colonel, um, informed me that he had been
15		made aware of a completed FBI investigation regarding allegations
16		regarding the selling of slots, cadet slots at the Pennsylvania State
17		Police Training Academy that may have involved either employees
18		of the commissioner's office or the governor's office.
19	Q:	Ok. How did you feel about that, what was your reaction to that, I
20		mean, it probably, I mean I would assume that that's something of
21		concern. I realize that. So, I'm not looking so much in terms of your
2,2		visceral or personal reaction. I'm not sure that's a fair question. But
23		I'm looking more in terms of as a professional in your position, what
24		was your reaction? How did you react to that?
25	A:	Ah, my concern at the time was understanding what the allegations

	1	,
1		were concerning the governor's office and was told by the colonel at
2		the time that the investigations had been concluded and that the
3		allegations involving the governor's office had been unfounded. So
4		feeling that there was no implication of the governor's office I really
5	1.	didn't have any concerns with going forward.
6	Q:	Ok, Mark. Now after, your best recollection is that Mr. Evanko
7		reported this information to you on or about May of 1999. Am I
8		correct?
9	A:	That's again from my recollection of what the complaint said. Yes.
- 10	Q:	Ok. Now I want you to think independently. I want you to go back in
11		your minds eye. Set the complaint aside. And do you have any other
12		source of information as you sit here today that would indicate to
13		you, that you could share with us, about when Mr. Evanko brought
14	ľ	that information to you?
15	A:	No, I don't.
16	Q:	Did you make any notes?
17	· A:	No, I did not.
18	Q:	Um. I would assume that you asked Mr. Evanko some questions.
19	A:	Um, I don't recall what, if any, questions I asked. It was my
20		recollection of the conversation was that it was the colonel that was
21		providing information to me and I, for the most part, listened.
22	Q:	Ok. I think you indicated that he had told you it was a closed
23		investigation?
24	A:	That's my recollection. Yes.
25	Q:	Did he indicate where he got his information?

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ı	A:	I don't recall.
2	Q:	Did he at any time indicate to you that the source of the information
3		was the FBI?
4	A:	I don't recall that he indicated that.
5	Q:	Mark, do you remember if he indicated whether or not if he had
6		contacted or intended to contact or talk to Louie Freed. Judge Freed.
7	A:	I believe the Colonel did indicate that he would reach out to the FBI
8		to ascertain exactly the nature of the investigation and its status.
9	Q:	Ok. Now, um did he share any information about how the
10		investigation arose or what triggered it?
11	A:	No. he provided me, as I recall with just the very basic, one to two
12		sentence facts in terms of the allegation itself.
13	Q:	Now you indicated in your response to an earlier question that the
14		standard operating procedure, those are my words, they were not
15		yours, that normally the communication was by memo or email or
16		some sort, typically a report.
17	A:	There was. Yeah, I do. I think the question that was put to me at that
18		time was sort of regularly scheduled communication occurs between
19		the governor and his cabinet. And the one regular form of
20		communication are written reports, that are sent to the governor.
21	Q:	Did Mr. Evanko ever put any of that information into a written report
22		for the governor?
23	A:	I don't know.
24	Q:	Did you ever check to see?
25	A:	No, I did not.
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1	Q:	Have you looked for any communiqués, documentary evidence,
2		email, electromagnetically record, you know, taped evidence or
3		anything like that of Mr. Evanko's communication to you or to the
4	'	governor's office?
5	A:	No, I have not.
6	Q:	Now, after, and who was present when Mr. Evanko shared this
7		information.
8	A:	I don't believe anyone else was present,
9	Q:	Where did the meeting, I assume it was not, at least by the way you
10		described it, I assume it was a personal meeting?
11	: A:	It was a phone call.
12	Q:	It was a telephone call? Do you know where Mr. Evanko was when
13		he made that telephone call?
14	A:	No, I don't.
15	Q;	Do you remember where you were when he made that telephone
16		call?
17	A:	I was in my office.
18	Q:	Do you remember how long that telephone conversation was?
19	A:	I don't remember how long it was. It was no more than a few
20		minutes.
21	Q:	Mark, I want you to think back on that conversation very carefully
22		now, and particularly this question here, during that conversation did
23		Mr. Evanko discuss Mr. Hykus?
24	A:	I don't recall, I don't remember him discussing Colonel Hykus. No.
25	Q:	Have you ever discussed this matter of this issue with Mr. Hykus?

	-	
. 1	A:	Not that I can recall. No.
2	Q:	Do you have a recollection of ever discussing this litigation with Mr.
3		Evanko?
4	A:	ther than acknowledging that the complaint had been filed, no.
5		Nothing beyond that. No.
6	Q:	Do you a recollection of discussing, when you attorneys weren't
7	· .	present, of course, but actually if your attorneys are present, it's not a
8		defendant, it's not privilege. But do you ever have a recollection of
9		discussing, you can tell me if you discussed it and then we'll worry
10		about whether it's privilege or not, when we get to subsequent
11		questions. Did you ever discuss any of the contents of the complain t
12		with any of the other defendants in this matter?
13	A:	No.
14	Q:	Let me make sure. Let me read them for you. Naturally you're a
15		defendant. Mr. Evanko's a defendant, Thomas Corey, did you ever
16		discuss it with him.
17	A:	No.
18	Q:	Do you know Mr. Corey?
19	A:	Yes, I do.
20	Q:	How long have you known Mt. Corey?
21	A:	Um. Approximately the spring of 1995.
22	Q:	Around the same time. Ah; do you know Mr. Westcot?
23	A:	Yes, I do.
24	Q:	Have you ever discussed it with him?
25	A:	No. Never.

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1	Q:	Joanna Reynolds and Susan, ah, Syndi are no longer defendants in
2		this action in this action . Hawthorne Conley ever discussed it with
3		him.
4	A:	No, I haven't.
5	Q:	Mark, there's an allegation in the amended complaint, there was an
6		allegation in the original complaint. Ah, that Mr., and in substance,
7		that Mr. Evanko informed you about this investigation and sought
8		permission to investigate Captain Ober. You answer appears to at
9		least generally deny that allegation. I might change again my
10	·	direction here a little bit and I'm going to ask you some questions
11		about that. Ok?
12	A:	Um-huh,
13	Q:	Do you know Captain Ober?
14	-A:	No, I do not.
15	Q:	Did you know who Captain Ober was before this complaint was
16	,	filed?
17	A: .	No, I did not.
18	Q:	Um, have you ever discussed Captain Ober with Commissioner
19		Evanko?
20	A:	Outside of matters involved in this complaint, um,
21	Q:	We can start there. Outside of matters involved in this complaint.
22		Have you ever discussed Captain Ober with Paul Evanko, um,
23		related or regarding matters having to do with this complaint?
24	A:	I'm not sure what you mean by discuss. I mean I
25	Q:	Any communication between two human beings is a discussion I
- 1		l de la companya de

ı guess of some sort, so whether it's by verbal or written means 2 I first heard, and to the extent that I had discussion with Colonel 3 Evanko regarding Mr. Ober it was that the colonel might mention his name as in for instance when the colonel called to inform me, that it's possible that Captain Ober's name may have been mentioned during that conversation. But I don't ah, don't recall specifically. 6 7 Q; It's possible that Captain Ober was discussed during the conversation 8 when Mr., if I understand you correctly, during the, it's possible, 9 underline the word possible, that Mr. Ober was discussed during a 10 conversation when Mr. Evanko informed you about the FBI 11 investigation into the potential sales, or the alleged, I don't know 12 exactly what it was, but the closed investigation to the sale of 13 position at the academy. Is that right? 14 I don't recall specifically. I'm sure it's possible. 15 Q: Alright. Did you ever have any discussions with Mr. Evanko after 16 that initial discussion when he informed you of the FBI interest 17 where Captain Ober was mentioned? 18 Um. I believe I participated in a discussion involving counsel where A: 19 the result of the colonel's investigation were discussed. I'm gonna get to it. That's' a whole area. We're gonna get to that. 20 Q: 21 A: Ok. 22 Q: Now, I am still concentrating on the original or the initial discussions 23 as to Captain, Ah, I mean, I'm sorry, as to Mr. Evanko informing 24 25 Ok.

1	Q:	Did Mr. Evanko, when he informed you of what the FBI was doing
2		did he indicate anything to you that caused you to believe that he was
3		· .
		going to look into the matter of try to learn more information about
4		the matter?
5	A:	The colonel did indicate to me that he planned to initiate an internal
6		investigation over how this matter was handled by the Pennsylvania
7		State Police.
8	Q:	[Sigh. Pause] Excuse me. Did Commissioner Ober indicate what he,
9		what he meant by, to borrow your words, how the matter was
10		handled by the Pennsylvania State Police?
11	A:	Did he indicate how?
12	Q:	Let me explain Mark, where I'm coming from.
13	A:	Sure.
14	Q:	From what you've told us so far, my understanding is, its easier to
15		understand my line of questions this way. My understanding is that
16		Mr. Evanko called to tell you about this closed investigation. Ok,
17		now he also indicated that he was going to initiate an investigation
18		into how the Pennsylvania State Police handled this matter.
19	A:	Yes sir.
20	Q:	Now that begs a question and this maybe a few questions. That
21		indicates that Mr. Evanko wanted to know how the FBI handled, or
22		how the Pennsylvania State Police handled the FBI interest, the FBI
23		inquiry, is that fair to say?
24	A:	I think that's, you'd have to ask Colonel Evanko that.
25	Q:	Well, how did you understand it?
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ı	A:	Ah the colonel wanted to better understand how, um, this
. 2		information was in fact handled by his agency, how, how his agency
3		had perhaps worked with the PBI regarding the investigation.
4	Q:	Alright, Mark did he say why he had an interest in that area?
5	A:	No. I don't recall him saying what.
6	Q:	Did you ask him why he was concerned about the Pennsylvania State
7		Police handled an FBI inquiry?
8	A:	I considered it to be, once I ascertained that there was not any
9		involvement on the part of anyone in the governor's office and that,
10		in fact, there was not any involvement of anyone on the part of the
11		State Police, I considered the matter at that point to be a matter for
12		the Colonel to address, um, um, through sort of, you know, the
13		administrative channels of the Pennsylvania State Police.
14	Q:	Why would he want to, why did you understand he wanted to
15		address it?
16	A:	Why do I understand why he wanted to address?
17	Q:	Let me lay some foundation.
18	A:	Sure.
19	Q:	The Federal Bureau of Investigation, by reputation, at least, one of
20		the finest law enforcement agencies in the world, would you agree?
21	A:	Yes sir.
22	Q:	Alright, Just, Ok, Mr. Evanko asks you, or, I'm sorry, Mr. Evanko
23		informed you that, in essence, in effect, the FBI had closed an
24		investigation into something that was going on.
25	A:	Yes sir.

1	Q: .	Did Mr. Evanko indicate to you that he was informed awakedily
2	1	
		about the FBI inquiry?
3		I helieve he did. I believe that he shared the, you know, that he was
4		sharing the information with me after he as well had been informed
5		that the, the ah, the investigation had been closed, and that he was
6		not aware of the investigation prior to that.
7	Q:	Exactly. In other words the investigation had taken place, the
8	j	investigation had, thank God, and my compliments to you, the
9		governor, and your staff, that thank God the investigation had been
10)	closed and Mr. Evanko was informing you that there's no indication
11		that you guys did anything wrong, or we did anything wrong but I
12		just found out about it myself. Right?
13	A:	That's what he indicated to me. Yes.
14	Q:	Sure. And was he angry, Mark?
15	A:	I don't recall that he was angry. I believe that he was concerned, um,
16		that the matter had just been brought to his attention.
17	Q:	But didn't you tell us that he said to you that the investigation had
18		been into um, possibly people, um, allegations involving people in
19		the governor's office, or lieutenant governor's may be correct, and I
20		think and the higher ups in the State Police?
21	A:	That's what he had indicated to me. Yes.
22	Q:	Sure, so when he was telling you that he also indicated to you that he
23		had only learned about this after the investigation was done.
24	Ä:	Yes sir.
25	Q:	Did you ask him who had knowledge of the investigation before it
7		was closed?

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1	A:	No. I did not.
2	Q:	ls it, I think you indicated it may have been possible that Mr. Ober
3		was discussed during that conversation but you have no specific
4	/	recollection. But you do recollect that Mr. Evanko indicated to you
. 5		that he was going to investigate how, quote/ unquote to use your
6		words, ah, the, ah. Pennsylvania State Police had handled the
.7		investigation.
. 8	A:	Yes sir.
9	Q:	So that meant that he was going to, that he wanted to investigate how
10		the FBI had dealt with, I'm sorry, how the Pennsylvania State Police
. 11		had dealt the FBI inquiry.
12	A:	I guess that's what the colonel wanted to ascertain. Yes.
13	Q:	Mark, didn't that concern you?
14	A:	No, it really did not. Um, the way in which the governor's office
15		interacts with its cabinet officers is to leave frankly those kinds of
16		administrative decisions and discretion to the cabinet secretary. My
17		concern as I indicated earlier was ascertaining what, if any,
18		involvement there had been on the part of the governor's office. Ah,
19		once I was informed that in fact the investigation had not found that
20		there was any involvement ah, I frankly, I saw it as the colonel's, ah,
21		it was appropriate for the colonel to follow up in whatever he
22		deemed appropriate. Um, because, and that at that point I viewed it
23		as a matter, an administrative matter, internal to the Pennsylvania
24		State Police.
25	Q:	I'm not trying to be facetious or contentious. Do you trust the FBI?

		34	_
1	A:	Do I trust the FB1?	
2	MR. BAILEY:	Sure.	
3	A:	I don't know the FBI. I have no reason not to trust the FBI.	
. 4	Q:	Let me ask you, um, did you have a concern that Colonel Evanko	
5		was upset that he had not known about this, what was going on, the	
6		FBI investigation?	
7	A:	Did I have a concern? No.	
8	Q:	Well, you had understood that the FBI investigation had been into	
9		the governor's office, and higher-ups in the State Police, right?	
10	A:	That was the allegation. Yeah.	
11	Q:	Would you expect the FBI, if they heard such allegations to come	
12		and check with you first or to do their investigation first?	
13	A:	I would not expect them to come, no, I would not expect them to	
14	,	come to me.	
15	Q:	Of course not, because they might compromise the investigation,	
16		right?	
17	A:	Yes sir.	
18	Q:	Ok. All of us again, I'm not trying to talk down to you, but I think all	
19		of us realize that in a society ruled by laws and not by men that you	
20		follow procedures and regardless of what level, a law enforcement	
21		agency's got to do it's investigation. right?	
22	A:	Yes sir.	
23	Q:	Did you ask Colonel Evanko why he was concerned that there be an	
24		investigation into how his agency handled a closed FBI	
25		investigation? quite frankly, apparently yielded a lot of good results	

		25
I		that were laudatory, at far as the integrity of the governor's office
2		was concerned, at least.
3	A:	No, I do not.
4	Q:	Do you know what a "Whistle Blowers" statute is?
5	A:	I'm generally familiar with the terminology.
6	, Q:	Is it fair to say that if you became aware of some issue of apparent
7		corruption in government that you would report it to law
8		enforcement authorities?
9	A:	Yes sir.
10	Q:	You would expect, I'm sure that anyone who works in the
11		governor's office or under you, ah, you'd expect them to do the
12		same. Is that correct?
13	A: .	Um-hmm. Yes sir.
14	Q:	And you, you, and this may be an unfair question because having
15		been there and done that to some extent and it's an extremely
16		difficult one, is it fair to say that in doing so, and looking at matters
17		of public corruption the first obligation that you have is to lawfully
18		examine, lawfully report and investigate public corruption and put
19		that ahead of political concerns. Is that correct? Politics second. The
20		law first,
21	A:	Yes.
22	Q:	Were you concerned that Mr. Evanko was personally angry over
23		being informed after the fact about the FBI investigation? Did he say
24		that?
25	A:	Not that I recall. No.

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1	Q:	Did he ask you if you knew anything about it?
. 2		No.
3	Q:	
	*	Did you ask him to find out why it hadn't been, why they had, why
4	1	you hadn't been informed earlier?
5	A:	No.
6	Q:	You were not upset that you had not been informed before the
7		investigation was done. Is that correct?
8	A:	Yes sir.
9	Q:	Did you have visions going through your mind, you know, have they
10		been tapping my telephone, have they been bugging the office, have
11		they been following people?
12	A:	No.
13	Q:	Alright. Did you ask Mr. Evanko any of those kind of questions?
14	A:	No, I did not.
15	Q:	Mark, there's an allegation, if you give me just a second, I'd like to
16		find the paragraph.
17		[Pause.] let me read this paragraph to you. Its paragraph 43 in the
18	,	amended complaint, it reads as follows. Very brief, one sentence
19		paragraph.
20		"Subsequent to learning about the FBI investigation, Colonel
21		sought the personal and official approval, (excuse me) of the
22		desendant, Mark Campbell, to begin an investigation into Captain
23		Ober. Campbell was an assistant to the Pennsylvania Governor's
24		Chief of Staff."
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1	MR. BAILEY:	Let me correct that, at the time, in May of 1999, precisely what was
2		your position?
3	MR. CAMPBE	LL: I was the Governor's Deputy Chief of Staff.
4	Q:	Deputy chief of Staff. Who was chief of staff?
5	A:	Mark Holman .
6	Q:	Mark Holman was. Um let's go back to the first sentence, get that
7		out of the way and then go on.
8	A:	Sure.
9	Q: '	Is it fair to say that you deny that Mr. Evanko sought any personal or
10		official approval to begin investigation into Captain Ober>
11	A:	Yes sir.
12	Q:	Alright. Now you did not deny that Mr. Evanko mentioned it during,
13		this discussion that he was going to look into or investigate how his
14		department handled the FBI probe. Is that correct?
15	A:	Yes sir.
16	Q:	Mark, why, why would Mr. Evanko call and discuss that with you?
17	A:	I believe that the Colonel feit
18		
19		END AUDIOTAPE SIDE ONE BEGIN SIDE TWO.
20		
21	Q:	Just one second. Let me go back and ask the question, we generally
22		do that. It's about the 45-minute mark. Syndi, please keep me
23		apprised of the time when you have to go. Ok? So we
24	MS. GUIDO:	We're good on time. I don't really need to leave until close to 5.
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ì	MR. BAILEY:	I think we're doing fine. He's being very responsive. I appreciate	
2		that, incidentally Mr. Campbell. Ok, my question was, what 1 'm	•
3		looking for was why Mr. Evanko, now you were Deputy, you're the	
4	ļ	you were, you're title was Deputy Chief of Staff, why did Mr.	
5		Evanko, why would he call you with this?	
6	A:	Ah, I'm not sure. There's two different ways to answer your	
7		question. If you're asking me in terms of my job, why me, versus	
8		why would the colonel call me. Um, at the time	
9	Q:	Mark, let me put it this way. It really is an important question. Let	-
10]	me tell you where I'm coming from. I'm trying to learn whether	
11		there were personal, political, official custom practice and usage. A	
12		normal way of doing business, you know, sometimes I been in	
13		situations, all of have, you're a staff worker in politics. You develop	
14		a contact in an office. The essence of politics is the flow of	
15		information. Maybe he calls you because he likes you, of he	
16		develops a relationship. This is the way I get access. I don't know. I	
17		want you to explain for us, to the best of your knowledge why Mr.	
18		Evanko would call and talk to you about this.	
19	A:	Sure. Among my responsibilities was to serve as a liaison to several	
20		of the governor's cabinet agencies, ah, including the Pennsylvania	
21		State Police. So I was Colonel Evanko's point of contact within the	
22		governor's office as his deputy chief of staff. Um, and I believe that	
23		the colonel had reached out to me to convey this information to me	
24		because there were allegations involving the possible involvement of	
:5		the governor's office that were a part of the investigation.	

		70
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1	Q:	Ok. Do you know why he wouldn't simply wouldn't call the FBI and
2		say, "Jeez, can you tell me about this? I want to see if I have some
3		bad guys out there in my outfit or something."
4	A:	I don't. I can't respond to what the colonel either did or didn't do or
5		why he would not have taken any particular action.
6	Q:	But you didn't make an inquiry of the FBI or anything like that?
7	A:	No sir.
8	Q:	Do you know whether he did?
9	A:	I don't know.
10	Q:	(Sigh) Mark, prior to when the complaint in this matter was filed is
11		there any information known to you which would shed light on Mr.
12		Evanko's motivations for telling you that he was going to begin
13		investigating his own agency people to find out what happened in the
14		handling of the FBI probe.
15	A:	None that I, none that I'm aware of.
16	Q:	Do you have a recollection of him indicating who he was going to, I
17		understand there is no specific recollection of Mr. Ober, although the
18		name is apparently familiar to you, that's my observation, your
19		observation, your recollection is what counts. Aside from Mr. Ober,
20		do you have a recollection of him indicating any names, ah, bureaus,
21		sub-departments, parts of his organization he was going to check
22		into?
23	A:	No, he didn't indicate anything like that to me.
24	Q:	Was anyone else in on that conversation that you recollect?
25	A:	The conversation with the Colonel?

1	MR. BAILEY:	Yes sir.
2	MR. CAMPBEL	L: Not that I'm aware of.
3	Q:	And you have indicated that, well, let me put it this way. In it, was
4		•
5	1.	there anything in Colonel Evanko's words, his phraseology, or
6		attitude which indicated to you that he sought any kind of ratification
7		or approval from you to look in to this matter?
8	A:	No.
9	Q:	Did he make any comments about it being had politics?
10) A:	No.
11	Q:	Did he mention anything about any state representatives that may
. 12		have been like that?
13	A:	No.
14	Q:	Did he mention any names of anyone that may have been looked at. I
15		don't mean for his investigation, I mean in the FBI investigation.
16	A;	No.
17	Q:	You had indicated the lieutenant governors office.
18	A:	No. You mentioned it before, I don't recall indicating the lieutenant
19		governor's office. It was clearly understood by me that the focus of
20		the FBI investigation, the allegation of the, the FBI allegation
21		involved the governor's office. Not the lieutenant governor's office.
22	Q:	So you didn't mention the lieutenant governor's office. Your
23		recollection
24	A:	My recollection was
25	MR. BAILEY:	Cause that was mine. Ok. I may have, I don't remember, I honestly,

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1		I'll take your word for it, at this point but I had thought you had
2		indicated the lieutenant governor's office, I don't know. So I
3		apologize. I stand corrected. Now, ah, the, your responses to certain
4		of my questions indicates that subsequent to that discussion you
5		learned more subsequently about the FBI probe concerned. Where
6		did you learn that?
7	A: '	I believe
8	MS. GUIDO:	I'm going to object to discussions that were had with counsel, which
9		is where we're going here.
10	MR. CAMPBELI	L: That's where it was, right.
11	MR. BAILEY:	Well, ok. First of all that's not for counsel to say. It's for you to say
12		if they occurred with counsel and if they did, in other words, if your
13		attorney informed you of those things then they may or may not be,
14		but let's assume for the sake of it, I would waive any objection to
15		they're being privilege. I mean if it'sfact information was provided
16		to you as a source, you do have to tell us that. But I'm not interested
17		in the conversation, subsequent conversation with counsel. It's legal
18		advice, it's a different matter. But where you learned it from is
19		important. Aside from counsel, ok, where did you learn about the, if
20		indeed you did from another source, the substance of what the FBI
21		probe was about?
22	A: -	I'm not sure how I, the way in which I learned about some substance
23		of the FBI allegation was, I believe, in a session that involved
4		counsel where
5	Q:	Again, I really don't have an interest to go there cause I don't want

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ł		to argue. It doesn't matter to me.
2	A:	Yeah.
3	Q:	Aside from discussion with counsel, or information provide by
4		counsel, what other sources?
5	A:	I don't believe there were any.
6	Q:	Mark, Mr., Evanko called you up told you about this thing and you
7		never, it raised no flags with you as a political operative, something,
8		incidentally, which I admire in this society, I do, I-I-I- it's not a
9		negative thing to me. To me politicians and quite frankly, a country
10		has to run itself politically. I accept that and I realize that, I view it as
11		a positive thing. But what, where I'm going with this question, is
12		really quite simple, you know, Pennsylvania State Police
13		Commissioner calls me up, and he says, I'm Mark Camphell, and he
14		says, the FBI did a probe and, ah, you know, I just learned about it,
15		in effect or I found out about it, or whatever, and it's closed, you
16		know, but you don't have any follow up questions about what
17		happened, what the source of this could be because of you know, its
18		just good politics to find out what's, you know this is a potentially
19		explosive public problem. Somebody makes a false allegation, for
20		example, if it's something that comes from a political opponent, a
21		potential political opponent, or somebody that's got an axe to grind. I
22		mean, I think, it is legitimate to try to find out the background. I
23		mean I would want to know. I'd certainly want to know. I'm just
24		curious why you didn't, what's going on?
25	A:	Maybe, I'm a more casual political staffer that what you probably
[

1	Q:	No, you're probably a better one.
2	4.	[Laughter]
	A:	
3	A.	My concern, ah, and to use your word, my political concern was how
4		this might involve the governor. Once I was assured that it did not
5		involve the governor or the governor's office, my concerns ceased to
6		exist. And, in my mind, then became a matter for Colonel Evanko to
7		deal with administratively.
8	Q:	Let me go there next. Because you had indicated earlier, you know,
9		if you, is it fair to say that your reaction or your feeling was, "Phew.
10		Our folks aren't in this." And I'm sure that Governor Ridge would
11		not be part of anything like that. I'm sure that, you know, actually
12		not it. But the point was our office is not involved in this. That's
13		Evanko's problem.
14	A:	Ah
15	Q:	Not saying that you felt that callously about it.
16	A:	The point is, I mean I was not surprised that neither, neither anyone
17		from the governor's office or from the commissioner's office was
18		involved. And as I said, having be assured that that in fact was the
19		case, ah, I really ceased to have any interest in the matter going
20		forward.
21	Q:	Alright. All of that out of the way now that we've covered that
22		ground did it occur to you at the time, were there any question in
23		your mind as why is Mr. Evanko telling me about investigating his
24		own folks?
25	A:	I think that he, it was in the same conversation, where he had
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1	Q:	Did you ask him to get back to you?
2	A:	No, 1 did not.
3	Q:	Do you know of anyone in the administration, by that I mean the
4	1.	governor's office over here as opposed to someone in the State
5		Police who asked Mr. Evanko to do any kind of report or
6		recommendation?
7	A:	I'm not aware of anything like that. No.
8		
9		[Sound of papers turning]
10		
11	Q:	Have you ever had any discussions with any FBI personnel about the
12		probe?
13	A:	No, I've not.
14	Q:	Have you ever seen any FBI 302's or any FBI reports or information
15		about the probe?
16	A:	No. I've not,
17	Q:	Aside from your lawyers, have you ever received any information
18		about where the probe went or what occurred?
19	A:	No, I've nat.
20	Q:	Is there any policy in the administration about how internal
21		investigations are to be conducted into personnel activities?
22	A:	Not that I'm aware of, I can't speak, I don't know, for instance, how,
23		the office of administration handles, you know investigations of state
24		employees, but, I'm not aware of any of those policies.
25	Q:	Aside from Colonel Evanko, did you ever discuss the FBI

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1		investigation with anyone else?
2	A:	I believe
3	MR. BAILEY:	Your lawyers are excluded from this.
4	MR. CAMPBEL	L: Certainly. I believe that I had been informed by the colonel I shared
5		the information with, uh, Mark Holman, the governors chief of staff,
6		with Tim Reeves who was the governors director of communications
7		and Paul Difano, the Governors General Counsel.
8	Q:	Do you know if any of those folks had any discussions with Mr.
9	.]	Evanko about the matter?
10	A:	I don't know.
11	Q:	Did you ever ask them?
12	A:	No, I did not.
13	Q:	Did they ever tell you?
14	A:	Not that I remember. No.
15	Q:	Because Mr., ah, do you have any subsequent, I know I asked if you
16		had any subsequent conversations with Mr. Evanko after this
17		complaint was filed. Between the period of time that Mr. Evanko
18		made this phone call to you and before the complaint was filed did
19		you have any other conversations with Mr. Evanko about the FBI
20		probe?
21	A:	The colonel was present for the one meeting I referred to earlier, I
22		believe, where.
23	Q:	Not with the attorney's
24	A:	Ok. No this
25	Q:	Let me go back and make sure it's understood. Before this complaint
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1		was filed and after, you know, the interval, between when Mr.
2		Evanko first called you, and when you first learned about it the PBI
3		probe and this complaint was filed did you have any conversations
4		with Mr. Evanko about the probe?
5	A:	No, I don't recall any.
6	Q:	I want you to go back over your awareness of Mr. Ober's name. I
7		want you to go back to prior to the complaint. Prior to the complaint
8		do you have any awareness of Mr. Ober's name?
9	A:	At some point, as I indicated earlier, either in the initial conversation
10		with the Colonel or, um, at the time during which we met with
11		counsel, I became aware of Mr. Ober's name.
12	Q:	[sigh] [sound of flipping papers] When was the timing of Mr.
13		Evanko's call to you
14	A:	Timing, as in time of day?
15	Q:	You said it was May of 1999, Right?
. 16	A:	Well that's the day, I do believe that's the date that was in the, ah, in
17		the complaint. I don't, I didn't recall specifically when it was.
18	Q:	Well the May of 19, incidentally May 12th of 1999 is when, ah, is
19		when Mr. Evanko, the plaintiff that is, the plaintiff that is informed
20		Mr. Evanko about the problem.
21	A:	Um-hmm.
22	Q:	Did you keep any kind of log of telephone calls?
23	A:	No, I do not.
24	Q:	[papers shuffling] Do you know if Mr. Evanko said when he learned
25		about the FBI probe when he called you? Remember when he called
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3		you did he say when he learned about it, like, you know, I learned
2		today, I learned last week
3	A:	I don't recall specifically. I just recall, uh, in general that it was fairly
4		recent. I don't know
5	Q:	Fairly recent. You had that feeling it was fairly recent. Did he
6		indicate whether he had met with any of his staff about it?
7	A:	He did not indicate that I recall.
8	Q:	[sigh] [pause] at any time were any kind of disciplinary actions
9		against Captain Ober or any one else discussed in the context of the
10		FBI probe? At any time?
11	A:	Not with me.
12	Q:	Do you know if they were discussed with anyone else on your staff?
13	·	The governor's staff?
14	A:	Not that I'm aware of.
15	Q:	Have you ever seen the results of the FBI investigation?
16	A:	I don't believe I have. No.
17	Q:	Did you ever, aside from asking your attorneys, maybe if you have. I
18	·	don't know. Have you ever asked anyone to find out the results of
19		the FBI probe, into the gubernatorial, the allegations of the
20		gubernatorial staff?
21	A:	No, I never asked.
22	Q:	I had asked you before about memos and that sort of thing, do you
23		know of any status reports?
24	A:	Na, I do not.
25	Q:	Regarding this matter?
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I	A:	No.
2	MR. BAILEY:	Do you remember early on I wanted to ask you some questions about
3		Colonel Hykus? Is it Lt. Colonel?
4	A:	Lt. Colonei Hykus, Yes.
5	Q:	Lt. Colonel Hykus. Um, did you ever have any discussion with Mr.
6		Evanko in the context of, the FBI probe, where Lt. Colonel Hykus
7		was discussed? Do you understand that question?
8	A:	What I do recollect, and it may be from the complaint, is that I
9	1 "	believe the allegation, or the chain of events it was that at some point
10	,	Mr. Ober reached out to then Lt. Colonel Hykus to inform him of the
11		FBI investigation.
12	Q:	Well, excluding the complaint, my question wasmy question was
13		actually a little different than that. Um, different than that response
14		would indicate. My question was did you have any recollection of
15		any discussions with Mr. Evanko, um, Mr. Hykus' name coming up
16		in a context of any discussion of the FBI probe?
17	A:	I believe that, I can't recall where during the series of events that
18		Colonel Evanko did indicate that he was aware that Colonel Hykus
19		had been made aware of the FBI investigation. um,
20	Q:	Why would he tell, I'm sorry, you hadn't finished. I apologize.
21	A:	Just to answer any question you were going to ask, um, I think, um,
22		only in terms of trying to provide me with some general overview of
23		how, I mean how the investigation had unfolded.
24	Q:	Ok. What's the significance of saying I just know and I didn't?
25	` A:	You'd have to ask the Colonel that, I don't know. He simply sure

		4H
1		that we, at some point
2	Q:	Do think he was trying to indicate to you that Hykus had stabbed you
3		in the back?
4	A:	You'd have to ask the Colonel. I don't know.
5	Q:	Well, no, I know, I'll, you may rest assured, I will ask the Colonel. But
6		what I'm asking is your impression because you, you lived through the
7		conversations and I was not privy to them. And what I'm asking you is
8		very, very, very simple. And I'm trying to ascertain why Mr. Evanko would
9		mention, you know, Hykus knew anything. Did you attach any significance
10		to Mr. Evanko indicating that?
	A:	No, I did not.
11	Q:	Is there a political, political staff political differences between Mr.
12		Hykus and Mr. Evanko?
13	A:	Not that I'm aware of.
14	Q:	Did Mr. Hykus enjoy the same political supporters within the
15		administration that Mr. Evanko does or did?
16	A:	Ah, as far as I'm concerned.
17	Q:	How about as far as other folks are concerned not you Mark? Not
ر 18		you, I understand how you feel. The same way towards both of them.
19		How about other folks? Did they enjoy support from other people in
20		different ways?
21	A:	I've never heard anyone indicate that there is any lack of respect or
22		support for either one of them.
23	Q:	Does Lt. Colonel Hykus have a contact person over here in the
24	•	administration?
25		•

1	A:	Um, at a, currently? Currently they would deal with the Governor's
2		Deputy Chief of Staff, Who's now Lisa Baker but at the time I would
3		have been the primary point of contact for the commissioner and his
4		deputies.
5	Q:	[pause] Based upon your, how long have you, what was your
6		background before deputy, was your background before you became
7		deputy,
8	A:	I worked for congressman, well, Congressman Tom Ridge for twelve
9		years before that.
10	Q:	And, what's your educational background?
11	A:	I have a Bachelor of Arts from Allegheny College in Meedville, PA.
12	Q:	Ok. Um, do you have knowledge um, of any transgression against
13		any law or regulation that was committed by Captain Ober, any of
14		this?
15	A:	No, 1 do not.
16	Q:	Has anyone ever brought to your attention or indicated to you in any
17		way that they believe that Captain Ober, broke a law, violated a
18		regulation, or ah, acted in some way that was inconsistent with the
19	. ,	letter or the spirit of the law or State Police regulations?
20	A:	Not that I'm aware of.
21	Q:	Did Mr. Evanko ever get back to you and say that he felt that Mr.
22		Hykus had done something wrong?
23	A:	No. Not that I can recall.
24	Q:	Was there anything unusual about Colonel Evanko, if he raised Mr.
25		Ober's name, we know that he raised Mr. Hykus's name, was there
		·

1		was anything unusual about him raising their names in the context of
2		a probe which had successfully indicated that there was no
3		wrongdoing?
4	A:	Not from my perspective.
5	Q:	Did he indicate whether or not there were charges against a
6		Pennsylvania State Police officer which at been brought as a result of
7		the probe? Is there one officer? One trooper?
8	A:	I don't recall that.
9	Q:	Did you ever learn that, did that ever, is that something that came to
10		your attention somehow.
11	A:	It might have been something that was brought to my attention
12		subsequently.
13	Q:	Not by your lawyers, by somebody else. Anybody else.
14	A:	No, not that I can recall.
15	Q:	Otherwords it would have been your lawyers.
16	A:	I believe so.
17	Q:	So when Mr. Evanko called you, he didn't say the probe indicates
18		there's nothing wrong in the governor's office or high up in the State
19		Police although there is going to be a State Policeman that's going to
20		be charged,
21	A:	No, I don't believe he did.
22	MR. BAILEY:	Never even brought that to your attention.
23	A:	Not that I recall.
24	Q:	How many, let me see, from 1995 on Mr., you were the contact
25		person for Mr. Evanko?

ı	A:	Through the end of 2000, yes.
2	Q:	Ok. To the end of 2000. Who does it go to then?
3	A:	Ah, Lisa Baker. Governor's Deputy Chief of Staff. Actually, first,
4		initially Duncan Campbell, who was the governor's Deputy Chief of
5		Staff for a short period of time and then Lisa Baker.
6	Q:	Have you ever discussed this litigation with Lisa Baker?
7	A:	No, I did no.
8	Q:	Did she ever indicate that she has discussed it with Mr. Evanko?
9	A:	No, she's not.
10	Q:	Did she ever indicate that she has discussed Mr. Ober with Mr.
11		Evanko?
12	A:	No, she's not.
13	Q:	Did she ever indicate she discussed Mr. Hykus with Mr. Evanko?
14	A:	No, she's not.
15	Q:	Now, the other gentleman, Campbell?
16	A:	Duncan Campbell?
17	Q:	Mr. Duncan Campbell. Have you ever discussed Mr. Evanko's
18		handling of the FBI matter with Mr. Duncan Campbell?
19	A:	No, I have not:
20	Q:	Has Mr. Duncan Campbell ever mentioned any ah, discussed Mr.
21		Ober with you?
22	A:	No, he has not.
23	Q:	Did he ever discuss Mr. Hykus with you.
24	A:	No, he's not.
25	Q:	Have you ever read, does Mr. Ah, Mr. Evanko still send his reports
		over there?

		44
1	A:	Yes he does.
2	Q:	Do you ever read them? You still read them?
3	A:	Of course, unfortunately I don't.
4	Q:	Don't mean to put you on the spot there, Mark. But do you ever read
5		them or look at them.
6	A:	No, I don't.
7	Q:	So, it was rare that Mr. Evanko would call up and talk about an
8		internal matter and about someone under him in the staff in the
9		context of investigating State Police activities then, wasn't it?
10	A:	The Colonel and I talked with, you know, some regularity, um,
11		concerning a whole host of issues involving the State Police. Um, so
12		it was not rare for him to talk to me, um about a matter involving the
13		State Police. Um, as I indicated earlier I don't think it was, uh, I did
14		not find it surprising given the allegation involving the governor's
15		office that he raised this issue with me. Um, I do not recall him
16		contacting me on any other matter involving an internal investigation
17		or an FBI investigation.
. 18	Q:	So, in five years of talking to Mr. Evanko, you don't have a
19		recollection of any other single instance where he talked about
20		investigating his own staff over a problem, dealing with an external
21		investigation?
22	A:	Not that I can recall but yet that doesn't mean
23	Q:	Doesn't mean it didn't happen.
24	A:	No. No. No. No. Not that I can recall but again I guess, you know I
25		certainly viewed this allegation of the FBI investigation as unique

	-	
I		given the alleged involvement of the governor's office. So, in my
2		mind that was settled.
3	Q:	Oh, I understand, quite frankly, if Mr. Evanko had now told me there
4		was an investigation in the governor's office, thank God it was
5		closed, and closed on a positive note, I'm not suggesting that that's
6		not something that should be brought to your attention. I'm not
7		talking about that. I'm talking about him going on and telling you,
8		that apparently there was no follow up on that. But going on and
9		telling you there was an investigation that was on staff about how it
10		was handled. At the same time he was telling you, Mr. Hykus knew
11		but I didn't. Did he, do you think he expected you to be angry with
12		Mr. Hykus?
13	A:	I, I don't know what he expected but I was not.
14	Q:	You were not. Did you feel he was inviting or fishing for a response
15		on Mr. Hykus?
16	A:	No, I did not.
17	Q:	So as you sit here to this very day you don't know the significance,
18		I'm not saying you don't have your suspicions, we're not asking
19		about that? You might. But why he mentioned Mr. Hykus, you
20	,	don't
21	A:	My recollection was that simply there was a brief discussion as to
22		how the information had been handled internally by the State Police
23		and I think at that time it had been brought to Colonel Hykus's
24		attention,
25	Q;	But did you ask him any questions at all or did you just listen?

	1	
1	A:	No, I just listened.
2	Q;	[pause] Has Mr. Evanko ever discussed Mr. Corey with you?
3	A:	You mean if we had discussions regarding Colonel Corey? Sure.
4	Q:	Not things that Mr. Corey was doing. When I say discuss Mr. Corey
5		with you I mean in terms of personal activity, or even some official
6		activity relating to a personnel matter?
7	A:	Not that I recall.
8	Q:	How about any other staff workers?
9	A:	I really don't recall any.
10	Q:	But he did discuss Mr. Hykus with you about this knowledge of this
11		FBI probe?
12	A:	He did mention it. Yes.
13	Q:	Now did you come with that, come away from that discussion with
14		the impression that he was going to investigate Mr. Hykus's role, in
15		the FBMr. Hykus's role, in having knowledge of the FBI probe?
16	A:	I came away with the impression that he was going to investigate
17		how his agency overall handled its interaction with the FBI regarding
18		this investigation.
19	Q:	Let me step out for just a moment. I'm going to leave the video and
20		everything run because of time factors and see if I have any
21		additional questions. Ok?
22	A:	Um-hmm.
23	MR. BAILEY:	Again, please bear in mind that the machine is still on. So be careful
24		what you say,
25	MR. MARCECA:	I'm gonna have to change this in about another 5 minutes.
- 1		

(Referencing videotape). MR. BAILEY: Ok, what you need to do is, need to communicate you're going off 2 camera. Say the time. Shut the camera you're gonna change down 3 first. Shut the other one down second. Announce its time Never do them both at the same time. Then you have to announce when you go 5 back on. You have to run a time, a lapse timer. 6 [Sound of door being shut] 7 [SOME NOISES OF TAPES BEING CHANGED AND CAMERA'S CLICKING SHUT. Approximately 30isp of audiotape lapse] 9 10 Let me shut it down until you go back on. MR. BAILEY: 11 12 MR.MARCECA: I haven't changed it yet. MR. BAILEY: Oh, you haven't change anything? Well then lets just finish up. If 13 you haven't done anything. We'll close it down. I'm not supposing 14 15 counsel has, conceive that you have any questions, but I don't have nay additional questions. Mark I'd like to thank you very much for 16 your participation here today, I appreciate it. You're depositions 17 18 concluded. Tony, ah, just a second, he's gonna do a time check and shut it off. 19 MR.MARCECA: It's 15:33 and I'm now gonna shut off the cameras. 20 MR. BAILEY: That's, that's what you get with an old Federal Investigator. It's 3:33 21 22 to us common folks.

END TAPE

23 24

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Darrell G. Ober.

Case No.: 1:CV-01-0084

Plaintiff.

CIVIL ACTION

Paul Evanko, et al vs.

Defendant

PLACE:

Law Office of DON BAILEY 4311 North Sixth Street Harrisburg, PA 17110

PROCEEDINGS:

Video Deposition of Captain Larry Riley

DATE:

October 23, 2001

APPEARANCES:

For the Plaintiff:

Don Bailey, Esquire 4311 North Sixth Street Harrisburg, PA 17110

For the Defendant:

Joanna Reynolds, Esquire 333 Market Street Harrisburg, PA 17101

little unusual to you but I want you to feel free to ask, okay? And I'll be very happy to answer your questions and try to deal with any concerns that you might have. We are after a good fact record here. We are not here to trick or ask any smoking gun questions or anything like that, okay? If at any time you feel that you have, you are not allowed to break in the middle of a question, technically, but if you have some desire to speak with your attorney at any time, please don't hesitate to ask and we will accommodate you there, If for any personal reason you might have to need a break if you want one. It is never comfortable being a witness in matters like this. We do understand that. One very important thing that you should bear in mind is that you avail yourself of the opportunity to answer fully and completely any questions that may be raised. If I interrupt you, or somehow your attention becomes diverted and you don't get an opportunity to answer fully and completely, please make sure that you do so. Even if it means coming back to something, please take that trouble because we want to get a complete record of it. The other thing is that if you respond and you need to do so, verbally, don't make gestures, nods of the head, that kind of thing, we need to get a verbal response from you when you answer a question, and Joanna, I assume, the usual stipulation that objections are reserved until time of trial.

MS. REYNOLDS: Yes.

Good afternoon, it is 2:58 p.m. My name is Anthony Marcecca. My address is 2919 Dixie Drive, York,

Pennsylvania. I'm employed by PR Video and they have been contracted to do the video deposition on behalf of the plaintiff. This matter is documented as 1:CV-01-0084 in the United States District Court for the Middle District of

Pennsylvania. The caption is Darrell G. Ober versus Paul Evanko, et al. The deposition is now in process.

MR. BAILEY: My name is Don Bailey. I am an attorney. I represent the plaintiff in this matter of Darrell Ober. Mr. Riley, at this time I'm going have the videographer swear you in.

MR. MARCECCA: Captain Larry Riley, do you swear to tell the truth, the whole truth, nothing but the truth, do you, so help you, God.

MR. RILEY: I do.

15

16

17

MR. BAILEY: Okay, Joanna could we get a voice check

MS. REYNOLDS: I am Assistant Counsel with the United States Police, Joanna Reynolds and I represent the defendants in this matter.

MR. BAILEY: Okay, Thank you very much. Captain Riley, I'm going to be asking you a series of questions here. This is a deposition. Taken an oath, of course. I want you to feel relaxed. I'm going to ask you the questions, from time to time if you have any concerns or questions about what I'm asking or where I'm going with questions, it might seem a

- Q: Captain Riley, state your, Captain Larry Riley, is that correct?
- A: That's correct.
- That's Pennsylvania State Police, how long have you been employed by the Pennsylvania State Police?
- 31 years, sir.
- Q: In what capacity? What job do you have, what do you do?
- A: I'm presently the Director of the Administration Division at our Academy in Hershey.
- The Pennsylvania State Police Academy?
- A: Yes, sir.
- Q: Have you had an opportunity to read the complaint in this matter?
- A: No I haven't.
- Q: Have you heard anything about it aside from discussions you may have had with your attorney?
- A: Only while I, the discussion I had with my attorney.
- Q: I have a relatively limit area that I want to ask you questions about, okay? From time to time in going through those questions I may change direction, if I do I'll try to give you an advance notice of that fact if I don't and you become
- confused you make sure you ask me where I'm going, okay?

- A: I'd like to say I knew a little about the case what I read in the newspaper as well as when I spoke to Joanna Reynolds
- with, other than that I know nothing about it.
- Okay. Do you play any role in putting the curriculum together at the Academy?
- No.
- Who does that? O:
- A: It would be the training division which is Captain
- Gallaher, who is Director of the Training Division and Major
- Einsel is the overall Director at the Academy.
- Q: What function do you perform at the Academy?
- A: As Director of the Administration Division there is
- several areas of the operation that are in my command. Some
- of those are equipping the cadets, supplies equipment, the
- mounted unit, the community services unit, the ceremonial
- unit, the physical fitness unit. But as far as your question of
- do I have any input into the cadet curriculum, no I do not.
- Captain Gallaher and Major Einsel have that.
- Q: Why did you call Sergeant Margeson about a chain of
- command modification to AR1-1?
- A: Major Washington, who is now retired called me one
- afternoon, and I don't know if Captain Gallaher wasn't there
- or if he just called me because he knows me, but he called me
- and asked me if I knew where it was in the State Police
- Regulations that said someone had to go through the chain of

- command and at the time, it seemed like a simple question,
- and while I had him on the phone, I looked in the FR and the
- AR and I said I can't find it right now, but he said I've been
- looking for it, too and he couldn't find it and I told him I
- would get back to him and he asked me to check with Captain
- Gallaher and Major Einsel also because he didn't think there
- was anything in writing. So after hanging up I did some
- research and I couldn't find anything that specifically said
- that. I found a few things that kind of inferred that, but I
- didn't find anything that specifically said one had to go
- through the chain of command. So I checked with Captain
- Gallaher, he didn't know of anything. Checked with Major
- Einsel and Major Einsel said why don't you call Sergeant
- Margeson in our Bureau of Research and Development
- because he and I'll quote Major Einsel "is the Department
- Regulation guru". So I did that, I called Sergeant Margeson
- and asked him if he knew of regulation and where it was
- specifically written that one had to go through the chain of command.
- Q: Go through the chain of command for what?
- A: Anything. Meaning that a Corporal couldn't go to the
- Captain, the Sergeant couldn't go to the Major. There was a
- chain of command, meaning that troopers went through
- Corporals, who went through Sergeants, who went through
- Lieutenants and you followed your chain of command.

- How long have been in the Pennsylvania State Police?
- A: Now? 31 years.
- Were you in the military before that?
- A: Yes, sir I was.
- Q: Isn't the idea that you have an immediate supervisor or
- superior in the military or para-military organization like
- Pennsylvania State Police pretty basic?
- A: That's why I was sure when I talked with Major
- Washington that there was probably something in writing
- because it's almost, it's well known throughout the
- department that you follow the chain of command. It's drilled
- into you in the military, as well as in the State Police, you
- don't go outside your chain of command.
- Q: It's so basic, isn't it. It is one of those things where if you
- have a chain of command you don't have an organizational
- structure. You can't function if folks don't follow a chain of
- command, right?
- That's correct.
- Why did it need to be writing?
- A: Major Washington called me that afternoon and I know
- that he was having personnel problems down there but I didn't
- delve into his problems. I just answered his questions. It was
- none of my business to ask him why he wanted to know this,
- other than what I knew from some previous things that he was

- having some personnel problems in his bureau, but he didn't offer why he wanted to know it and I didn't ask him.
- Q: You didn't ask it because you are not in the practice of
- questioning or calling people above you in the chain of
- command and to call them to task. In other words, if you
- were cross-examined, if a superior officer calls you, you don't
- cross-examine him, what they are about or what they are doing, do you?
- A: No. It's none of my business really. None of my business why he wanted to know it.
- Q: What personnel problems was he having down there?
- A: He was having some problems with a lieutenant and
- sergeant that had been temporarily transferred and I don't
- know for a fact that that was why he was calling, but I was
- well aware of those problems and I surmised that that was
- why he wanted to know it, but I can't say absolutely that that's
- Q: Why would he call down there to the Academy. I'm not saying that he necessarily he called you. Why would he call
- A: Well, we fill a lot of telephone calls from the field
- regarding department regulations and what we train the cadets
- to do, and it is not unusual to get calls all the time over
- anything that we train the cadets.

the Academy.

- Q: The time that he called you...when was this? When did
- this call take place?
- A: I'm going to say, I didn't record this in writing or
- anything. I'm going to say it was probably around July or
- August of 2000.
- Q: So he called and he asked this question about the chain
- of command and is it correct to say that it really hadn't
- occurred to you before that it would be in writing, never to
- even look for such a thing before that you took chain of
- command for granted, is that true to say?
- A: No. I thought it was probably in writing somewhere.
- O: That's what I mean. In 30 years, at that time you had
- about 30 years in?
- A: Roughly.
- O: You had never run across a regulation in the
- Pennsylvania State Police that said you're supposed to,
- whatever you are supposed to do, stay within your chain of
- command whatever it is, right?
- A: I never recalled reading one, but I was sure that one
- existed when he called me. I said I know that it exist and as
- soon as I find it I'll get back to you.
- O: You were wrong weren't you?
- A: I was.
- Q: 30 years of experience in the Pennsylvania State Police,
- Pennsylvania State Police, one of the finest admittedly police

- organization in the entire country that has been in effect since
- 1905, I think your previous witness told us, or been in
- existence since then, never had a need for this regulation to
- tell somebody, well I think it should be obvious, what I think
- doesn't matter. And you were so sure about it, you were sure
- it was there, but when you looked it wasn't anything there, so
- then what did you do after you did some research?
- A: There was nothing specific. There's nothing that was
- actually said what Major Washington was looking for.
- What was he looking for more specific?
- A: That a sergeant must go through a lieutenant, that a
- lieutenant must go through a captain. He cannot jump to
- higher rank.
- Q: In doing what?
- A: In dealing with your every day duties. If you have a
- question about how to do something, if you have a question,
- anything about the department, a trooper goes to the corporal,
- and if the corporal can't answer the question, then the corporal
- allows him to go to his sergeant.
- Q: Who enforces the chain of command?
- A: Supervisors.
- Q: Of course. If I'm a sergeant and members of my squad,
- or members of whatever my little organization is, raise an
- issue and then come to me. In the State Police, it is trooper,
- corporal, sergeant, lieutenant, captain, like that, right?

- A: Correct.
- O: And so if I'm a lieutenant let's say, I'm a section leader
- somewhere or commander in the Pennsylvania State Police,
- and troopers are coming to me and they are going by their
- corporal and their sergeant, do I have a duty to tell them to
- follow their basic command when they are communicating
- some sort of request or problem.
- A: Yes.
- O: That's just sound organization and pretty basic, right?
- A: That's correct.
- Q: But there is no captain, there is no regulation that deals
- with that that says, captain are supposed to tell their troopers
- to go through their chain of command is there, or is there,
- maybe there is I don't know.
- A: It wasn't in writing at that time. When Major
- Washington called me I could not find it in writing.
- Q: Chain of command, following the chain of command, did
- you ever use the term "chain emphasis" in the State Police?
- A: Command emphasis?
- Q: Command emphasis.
- A: It's not used commonly, no.
- Q: Do you teach chain of command before Subsection C
- was added to you written regulations. Did you teach chain of
- command?
- A: Yes.

- O: Do you know how much instruction time was spent on it
- or how the program was structure?
- A: No I couldn't answer that. It's told to the cadets and
- when they go out into the field when the cadets graduate from
- the academy, they go out into the field, there is a field training
- program and there is a checklist of duties that their coach that
- they are assigned to insures that they are instructed on all
- these different areas of the job and one of those areas is the
- chain of command.
- Q: The chain of command has to be followed because the
- Commissioner can't deal with every personal request and the
- chain of command is in place so that the organization will run
- consistently and efficiently, right?
- A: Right.
- Q: I hesitate to say this, but I don't think the Army has a
- chain of command provision like the State Police does. Do
- you know if you ever checked the Army, the Marines Corp,
- the Navy or the Air Force on whether there's a regulation
- which is sanctionable against a soldier, airman or marine for
- not following the chain of command.
- A: It was 35 years ago when I was in the Marines Corp and
- I don't recall any regulations, but I know that that was
- something that was drilled into us as, in boot camp, as well as my career, not my career but the three years I spent in
- Marines Corp, and the chain of command was something that

was very much enforced, and as far as regulations, it was too many years ago, I don't know if there was a regulation or not, but I know it's used and it's enforced in the Marines Corp.

Q: Doesn't it operate though on commanders and not on subordinates, in other words, when I was in the Army, if a captain rifle company commander didn't encourage troops to follow the chain of command, you'd eventually would get in

trouble, being the Italian commander on his back, because that's poor leadership. For example, maybe a lieutenant or a sergeant would complain to the Italian commander, because the captain wasn't following the chain of command. I don't

remember. I honestly don't that's why I raised the issue if you

did any research with it. I don't remember anything, aside from telling a soldier, you are going to follow the chain of

command, you're supposed to respect the chain of command,

that's what you are supposed to do. It was never anything where you got punished if you didn't. Today, if the

Pennsylvania State Police under Subsection C is it insubordination if you don't follow the chain of command? If

you know. By the way, Captain, if I ask a question, you've

got to bear in mind, like again, I don't have your knowledge, I

don't know the Pennsylvania State Police the way you do. I may ask questions from time to time. If the answer to the

question is, you don't know, and that's a complete answer,

that's a very, very valid and good answer. Don't be afraid to

say, don't guess wildly. My question is, do you know anyone

since Subsection C that has been in effect who has been

disciplined because of Subsection C?

A: No.

Q: Do you know if it's ever been involved in an arbitration

or an evaluation by any louver volume?

A: I don't know.

Q: Let's go back to Subsection C and let's go back, you

didn't have the words at the time, I realize that but Major

Washington, he was a Major at the time?

A: That's correct.

Q: He called you and based on your recollection at the time,

Major Washington maybe might have had some personnel

problems. Maybe that was the reason why he called you. You

didn't ask him, he didn't tell you, but this chain of command

thing came up and he said is there some kind of regulation

that affects this, right? A: That correct.

Q: Now on or about that time, shortly after hearing from

Major Washington, you did a little bit of research and you

talked with some other folks there at the Academy, I think

you mentioned a Captain?

Captain Gallaher.

Captain Gallaher, anyone else did you talk with?

Major Einsel.

Q: Major Einsel. What did you do then?

A: As I said, we couldn't find anything. Major Einsel

suggested that I check with the department guru who was

Sergeant Margeson. And that's when I called Sergeant Margeson.

Q: And you believe that was sometime around July or...as

best as you can remember.

A: July or August of 2000, and as I said that is the best I can remember, it may not be exactly right, but best I can recollect it was some time in that period.

Q: And what did Sergeant Margeson say to you.

A: He thought there would be something in writing too, and he said that he would get back to me.

Q: Did he get back to you?

About 2 weeks went by and Major Washington was

waiting for me to get back to him, so I called Sergeant

Margeson again, and I said, I told him he never got back to

me and Major Washington is waiting for an answer and he said it doesn't exist, however, they are revising AR1-1,

Administrative Regulation 1-1, and that he thought that this

would be a good time to put it in. As the regulation guru that

was something for him to do. My responsibility at the time

was to get back to Major Washington and I did get back to him.

Q: Do you know who that lieutenant and sergeant that were giving Major Washington a problem? Who they were, what

16

their names are?

A: Yes.

Q: Who are they?

A: Is that confidential, Joanna?

Q: No, you have to answer that question. You listen to what

she says, but I believe. I interrupted and I shouldn't have. MS. REYNOLDS: No. I was going to tell him to

10 respond.

Q: Thank you.

A: Sergeant Kisthardt and Lieutenant Queen.

Q: As you sit here today and you understanding of what

difficulties Major Washington had with them at the time, it

was to the best of your recollection, a kind of situation where

they may have been circumventing the chain of command. Is

that fair to say?

A: No.

19 Q: What is fair to say?

A: I knew that they had a problem, where Major

Washington said that they were not, that they failed to obey a

direct lawful order, and they were temporarily transferred

because of that,

But that is insubordinati.... I'm sorry were you finished?

That's what I knew about the problem.

17

Q: How is that a chain of command problem. That's insubordination isn't it?

A: I'm not saying that's why Major Washington called me. I knew that he was having ongoing problems that arose from the failure to obey a lawful order, or direct order.

Q: So you are speculating that that's the reason he called you, right?

A: Which is what I said when I... Q: You are correct, sir. I'm just trying to make sure the record is crystal clear. I agree with you. I think you said originally that that's something you thought it might have been. I'm trying to learn how much you knew about that and why you thought that way, and I appreciate the fact that you are answering these questions. If I may summarize, these 2 individuals that you mentioned ended up being transferred apparently for some discipline or some disciplinary reason, we don't know, but it had to do with them not obeying a lawful order. But the fact is though, you don't know why as you sit here today, you don't know why Major Washington called you with that particular interest, is that correct?

A: Correct. Q: Did Major Washington ever tell you why he had an interest in that chain of command issue? A: No.

A: When I first called him, I think he thought there was one too, but he didn't know exactly where and he said he would get back to me.

Q: So he thought, you thought that if it wasn't one, there should be because this was an important thing. I'm not putting that down. You thought this was something that should be in writing, correct?

A: I thought that, but when Sergeant Margeson, when I called him the second time...

Q: Right, that's what I'm going at.

A: He said that this would be a good time to put it in writing. And I concurred with him.

Well, did he indicated that he had checked with anyone or talked with anybody in the meantime?

He indicated that he checked and couldn't find anything.

Did he indicate that he had talked with anyone in the 17

meantime?

I don't know what he meant by checked, whether he talked with someone or he did it on his own, but he indicated that he checked.

Q: Do you know if the term "chain of command" appears

anywhere outside of Subsection C in Department of Regulations?

A: Previously, I said that when our cadets graduate they go out in the field and their governed, in the field training

Q: Have you ever had an occasion to discuss the Subsection C with Major Washington?

A: No, Major Washington retired in January of this year.

Q: I know you indicated that, but sometimes you bump into people, the answer is though you have never had an opportunity to discuss that with him?

A: I haven't seen him since he retired. No, nor did I ever discuss it with him, no.

Q: When you got back to Major Washington you simply told him that you had made a report or recommendation of some type, phone call, whatever it was to Sergeant Margeson, right? You gave him some type of report or response?

A: Yes.

Q: What did he say?

A: He said that's what he thought, that he couldn't find it either, but he was looking for some help in finding it, because

as we discussed earlier, everybody thought it existed, but he said, that's what I thought. He couldn't find it either and we

kind of confirmed what he found out or what he thought on

his own, that it didn't exist.

Q: And Margeson indicated to you that this was a good time, perhaps to bring this thing up. Is it correct that when

you called Margeson, Margeson thought there might be something there. He didn't know about it. This guy really

knows the regs, he wouldn't have known it was there, right?

program, once they graduate from the Academy, I believe it is

field regulation 5-2, that has the field training program and one of the requirements that their coach in the field covers is chain of command. So that is at least one place that it's

mentioned.

Q: So they are taught to respect and follow the chain of command, right?

A: Correct.

Q: And you don't know if anybody has been sanctioned for not following the chain of command, but did you make any other suggestions or recommendations as far as AR1-1

concerns?

A: At one time I recollect Sergeant Margeson calling me and reading it to me and asking me if I thought that covered what we were looking for.

Q: Subsection C?

A: Right.

Did you think that it did?

A:

Did you discuss it with anyone else?

A: No, I had already gotten back to Major Washington and told him that it didn't exist.

Q: Did you call Major Washington and tell him about the language that Sergeant Margeson had shared with you?

- A: I may have said when I first called him and told him that it didn't exist, that AR1-1 is being revised and they were
- going to include a revision in there, to include it, but that didn't help him with this problem at that time.
- Q: How do you know it didn't if he didn't tell you what the problem was. How do you know it didn't...
- He was looking for something to use for something previous to calling me.
- Q: How do you know that?
- A: Well, again, I am surmising it was because the personnel problems that he was having down there, but again....
- Q: Don't surmise. Tell me, aside from that speculation, what did Major Washington say that made you think it had something to do with some personal thing in his command and his responsibility?
- A: He did not say anything and I did not ask.
- Q: You had 2 telephone conversations with Major Washington.
- A: That's correct.
- You had conversation with Gallaher, Captain Gallaher?
- Captain Gallaher.
- Can you spell that just for... G-A-L-L-A-H-E-R?
- A: That's correct.
- There is someone else you discussed it with, right there Q: in the..

- Major Einsel.
- Major Einsel.
- E-I-N-S-E-L.
- Q: What is his position?
- He is the Director of the Academy.
- What did he have to say? Q:
- He suggested that I call up Sergeant Margeson and it was
- his words that Sergeant Margeson was the department
- regulations guru. Those words were from Major Einsel.
- What did Captain Gallaher have to say?
- He didn't know of anything in writing.
- Did anybody think it was a bad idea?
- A: That what was a bad idea?
- Q: Subsection C. I'm sure you think it's a good idea even
- today, I'm not challenging your thoughts, I'm wondering if anybody thought that maybe it wasn't a good idea.
- A: No one asked specifically if it was a good idea. Sergeant
- Margeson read it to me and asked me if I thought that it met
- the policy void, so to speak and it sounded to me as though it
- What's policy void?
- A: What we have here. Something that you've...
- Q: Forgive me, I don't see it. I see it differently. It has been
- described by previous witnesses, a policy void, I wonder

- where you got that term from Mr. Margeson, right, "policy void"?
- A: No, I heard that at least one other time in a completely different case.
- Q: Do you thing that AR1-1 is the place where Subsection C belongs? In other words, does it fit in with that regulation do you think?
- A: Yes.
- Q: Why do you feel it belongs there, if you've given it much
- thought, you may have never thought much about it. Let me
- tell you why I ask that, Captain. I ask it because Mr.
- Margeson called back and suggested that AR1-1 was
- apparently being reviewed or evaluated or changed, or
- whatever it was marked up, or whatever they call it, and said
- you know this would be a time to do it, to add it in there, and I
- just wonder if there was any discussion that ARI-1 is the
- proper place for this or it is like a rider or amendment on
- legislative bill. A: AR1-I covers our structure, state police structure from
- what stations fall under what troops, what troops fall under what areas, what units fall under what sections, fall under what bureau, so...
- Q: That's why I'm asking if it belongs there. I can
- understand it going in field regulation about how you are
- supposed to behave, a regulation about, do you have some

kind of written regulation about how you are supposed to process a leave slip, or can I go down to the state trooper, stop

- at headquarters some day, walk up to the Commissioner's
- office and turn in a leave slip. If I do that I'll probably get my
- behind chewed out, aren't I?
- A: If you are member of the department, you mean?
- Q: Yes. I'm a trooper, I do traffic control, I've been on duty
- for a year. I'm a trooper, I'm a Pennsylvania State Police
- trooper. So I'm driving up the road here on my way home and
- I want to process a leave slip so I go in and go up to the
- Commissioner's office to turn in a leave slip. Is someone
- going to look at me like I'm crazy, are they going...sure they
- are going to look at me like I'm crazy, why? Because that is
- not the way you process a leave slip, because there is a
- procedure for doing that. You take your leave slip, I assume,
- you begin that process with your immediate supervisor, am I correct?
- A: Correct.
- What does that have to do with organization?
- What does the leave slip have to do with organization?
- Q: Your feeling is that Subsection C appropriately belongs
- with ARI-I. You saw no reason why it was out of place
- there. You felt it was an appropriate place for it.
- A: That covers the way we are structured, so I didn't see that
 - it was out of place there.

Q: That's fine, that's what I'm asking. Do you know when Subsection C took effect?

A: It wasn't that long ago. This is October, some time the

first of the year.

Q: Of 2001?

A: February or March, I'm saying approximately.

Q: How do you know that?

A: We got the changes. We make changes in our AR

Manual. I recall it was completely revised.

Q: AR1-1 was completely revised?

A: A complete revision and we are 10 months into the year,

so I'm going to say some time during the first of the year,

February or March.

Q: Have you implemented changes at the Academy for

teaching Subsection C?

A: (body response?)

Q: Why not?

A: Because we already taught it verbally.

Q: Do you know anything about how a violation of

Subsection C is punished?

A: No.

Q: Did Sergeant Margeson indicate any discussions with

anyone about Subsection C?

A: Not that I'm aware of.

lot of things in doing this kind of work and I have been absolutely astound on how easy it is to change a State Police regulation. I never realized it was as easy as it is. The reason I'm asking the question, so you know where I am coming

Q: I've been educated in this process, you frequently learn a

from with these questions is trying to learn how much discussion or review there may have been in making these

changes. I used to have, many years ago, he's actually past

away, but a friend who was a Pennsylvania State Policeman and he told me a funny story experience one time, he was

driving to a certain area and saw a Pennsylvania State Police car turned over in snowy and icy weather on its roof, and lo

and behold there was a trooper putting chains on the car, on

the tires, remember days ago, you are old enough, you remember what chains are, right. Now, why would the

trooper do that. Obviously, because there is a regulation, somebody is going to come and investigate the accident and

there's supposed to be chains on the tires, right.

A: I wouldn't want to speculate on that... Q: As it turns, that's what I was told why the reason was

done, no one was hurt, but it's that kind of a situation. You

are the second witness I have talked to about Subsection C.

I've also done other investigations. Can you tell me anything about what or how you are cited for if you violate Subsection

C. Can you be investigated for it. Does the violation of

regulations in the Pennsylvania State Police take any kind of set punishment with it that you know of, or is that pretty much an open ended thing...

A: No. If a supervisor was unpleased with a subordinate who was violating his chain of command, a supervisor would

do, what we call a DPR complaint sheet, real professional responsibility and that complaint sheet would go in and it

would be investigated to determine whether he did violate the

chain of command and if he did, someone would be assigned

to investigate it and do a report, his commanding officer

would review the report and determine whether it was

sustained, unsustained or unfounded, then it would go to the

disciplinary officer who is a captain and he would decide the discipline and it would be appropriate to similar cases so that

one trooper in part of the State wasn't discipline more

severely for a similar incident as another trooper did in another part of the State. That's briefly the disciplinary

process. It's not like that the crimes code where it says, that you'll get...

20 Q: Classification, sentence and all that kind of stuff, maybe I'm barking up the wrong tree there. Your experience as a

Pennsylvania State police officer, do you know of anyone

ever getting in trouble for violating the chain of command before Subsection C?

A: I can remember a lot people being reprimanded for it. I don't recall, I never have had any experience in the

disciplinary officer where I see these cases come in. But

throughout my career I can remember people being

reprimanded for it. You bypass the chain of command, you

are going to make somebody angry, mainly the person you bypassed.

Q: It could insubordination....

A: If you did it consistently it would be a form of

insubordination, if someone did it consistently after they were reprimanded for it.

Q: How long did the discussion with Sergeant Margeson take place.

A: Not very long, the first telephone call I told him what I was looking for and he said he would get back to me, but

maybe a minute, minute and a half.

Q: Did you fax him anything, say anything in writing to him?

A: No, not that I recall. I didn't have anything to fax him.

Q: I'm just asking. Did he call you and read the language to

you or did he fax you or send you a copy of the proposed language?

A: I think he read it to me. I don't recall a fax but I believe he read it to me. Did you make any recommendations to him for changes? A: No. I think you are misunderstanding my position on this as I'm not the person that was saying we need a regulation change, I was kind of like a middle man between Major

Washington and Sergeant Margeson in the Bureau of

Research and Development where Sergeant Margeson was,

since they had that regulation there, it was their determination

that it should be added. I think it was a phone call, if it was a

fax, I recall telling Sergeant Margeson that I thought he covered the problem.

Q: Did you ever tell Major Washington that this is

something that was handled up there, maybe would he consider calling Mr. Margeson himself, make sure the

language is okay? Let me tell you where I'm coming from

again. One of my little many offers here. You called

Margeson, Sergeant Margeson calls you back and reads now some language to you. You call Major Washington and you,

do you repeat verbatim, as you are sitting here today, can you

repeat verbatim Subsection C?

A: That ain't the way it happen. Q: It is probably a little bit rough. That's what I want to

learn. To me it's odd and don't get me wrong, Major

Washington has this interest. I can understand why he would

originally call you at first. He didn't quite know where to go maybe, I don't know how you folks, how well you know your

own ARI-1, I guess ARI-1 probably tells you, where you

should go for that kind of change. You figured it out, you've

talked to people around you and they said, the guru is

Margeson, Sergeant Margeson let's call him, that's his job,

any organization functions that way. You're doing your job

and sounds great to me so far. I can't understand though why at some point Major Washington and I'm not saying that there

is some big mysterious reason for it either, I just don't know.

Why doesn't Major Washington get plugged into Sergeant

Margeson, why don't you tell him, because I can't believe that

when you called Major Washington, I can't assume that you

knew what the language was.

A: I didn't, and I testified to that. When I got back to Major

Washington I said, it doesn't exist but they're revising 1-1 and

they are going to revise it... Q: Who's revising it?

A: R&D

Q: So you told him R&D is revising...

A: 1-1 to cover it, but I had no idea what the language was

Q: Did you raise Sergeant Margeson's name in that

conversation?

A: Yes.

Q: So he knew that it was Sergeant Margeson at R&D who

would be making the changes or drafting maybe the language

of Subsection C, cause you told him.

A: He knew that it was R&D. I don't know if it was specifically Sergeant Margeson or if it was somebody in R&D....

You said you gave him Sergeant Margeson's name.

Right, exactly.

But in any event, you told him it was R&D, and R&D

was where these things were done, am I correct?

A: Correct.

Q: Did he say anything in response?

A: He said I didn't think it existed because END OF SIDE ONE

Q: Major Washington indicated that he couldn't find it either. Now at some point you called Major Washington back

and told him that Mr. Margeson had given you information

though or read you some language, right?

A: (body response)

Q: No. Okay, so that occurred on the second call, this

conversation that we are talking about where R&D and

Margeson were mentioned that actually occurred during the second call?

A: Correct.

You wouldn't have known what to tell on the first call

anyway because you had gone to Gallaher and had a little

discussion with Gallaher and Major Einsel, I believe you said

was the Director and so that fits in, so then you got this call

back from Margeson, Margeson reads this language to you, recites it, right. Reads or whatever and gives you some idea of language and so then you call Major Washington...

Q: No. Okay, straighten it out for me.

When I first called Sergeant Margeson he said he would

get back to me. Approximately 2 weeks went by. I called

him back, and said you didn't get back to me. He said, I

know, we can't find it but we are revising the ARI-1 to

include it. At that time I called Major Washington and told him that we couldn't find anything, Sergeant Margeson

couldn't find anything, but 1-1 is up there under revision now

and they are going to include it. I didn't know what the

language was at the time.

Q: That was the last conversation you had with Major

Washington?

Regarding that, yes.

Regarding that. Did you have any discussions with

Margeson in the future then. That would have been when he

would have called you and told you...

Right, that would have been the third conversation then.

Did you relay that to Major Washington? Q:

A: No.

Q: Did go over it with Major Einsel?

A: No. Captain Gallaher?

Actually you didn't go over it with anybody else.

A: No. It wasn't my job to approve of 1-1.

Q: No. I'm not suggesting it was, I'm trying to learn how much interest you had in the specific language, or what it did.

Apparently, there was discussion about the concept, as I

understand what you telling me, the idea of it and nobody

could find where it was written down and language was being

developed by RD, that's basically it. And at some point during these different conversations you informed Major

Washington that this was RD, at least you would have been

communicating to him that this was an R&D function and that

Sergeant Margeson was the gentleman who did this kind of

thing. That was his job or whatever, however you put it. I don't want to put words in...

A: I said it, this is about the fourth time that I said it now, that is exactly the way that it happened. I called Major

Washington back and said, there is nothing in writing, we can't find it, R&D can't find it, however, they are revising 1-1

now and they are going to include the revision in 1-1, period.

That's what I told him.

Q: And you mentioned Margeson's name?

A: Right.

Q: Did Margeson seem pretty confident that it would be added to 1-1?

A: (body language)

Q: :Let me tell you why I said that? Why I ask you that? I want you to ask me why if you want to know why I am asking

A: It's not my job to know why you are asking me questions

the same as when Major Washington called me, I didn't ask

him why. I just answered his questions.

Q: Somehow I thought you were going to say something like that. Let me just ask you this though. I'd ask you if

Sergeant Margeson felt confident that it was going to be

added. Did he indicate that he had reviewed Subsection C or

some language to that effect, or some type of added regulation with anyone?

A: Not that I recall.

Q: Did he indicate that he had gotten any approval or that he 17 went to the front office with it?

A: Well it doesn't get signed. It goes to front office for signature and all the changes are highlighted. So it's not

going to get signed. He's not the one that is just going to

make something up and not get it approved, it will go through

his chain of command and it'll end up in the Commissioner's

office for signature by the Commissioner or one of the

Deputies. I'm not sure who signed it.

Q: The fact is that it is the Commissioner who makes the decision or at least has the authority to make the decision on a change and regulations?

MS. REYNOLDS: Are you asking a question?

Yes. There's a question mark at the end of that.

A: Yes.

Do you use Subsection C, what was that as a major change in the AR1-1?

A: Not a major change in AR1-1, no.

How would you rank it. Here's 100 years of

Pennsylvania State Police history, Majors, and Captains, and

Lieutenants who this never occurred to that this wasn't in

writing, you are assuming that the reason Major Washington, I understanding you are just guessing or assuming, Major

Washington is interested because maybe he had some

problems, I going to assume from that you thought he couldn't

enforce discipline or do something. He needed some power

to do something about folks that didn't fall in the chain of

command. I'm just assuming that. Somebody is thinking that

way. There is a need for this. You don't just go out, making

changes on major regulations for nothing. How do you rank

at given any knowledge of experience you might have with

changes in PSP regulations. How did you view this

Subsection C?

A: I don't see that it changed very much because we always follow the chain of command anyway. It's just that now it's in writing. So I wouldn't say it was major, it's just that every now and then things come up and I'm going to use that term,

"policy void", and say hey, there is nothing, everything that

we do practically is in writing to cover grievances and all

kinds of different things and people often challenge things. I say well show me why I have to do that in writing. So when

it was discovered through Major Washington's question that it

wasn't in writing, it was decided that it should be put in there. But as far as being a major change, I would say, no.

Q: Do you think it was a relatively harmless change maybe one that might not have been necessary?

A: No. Once we found out that it wasn't in writing, we have

everything in writing from all regulations. Q: That's why I'm asking. I'm not trying to be silly. I don't

want you to think I'm trying to argue with you. But why it is so important to be in writing? You have commanders, you

have leaders, you have a way of doing things. Everybody

knows if you don't work and get along and get things done, sooner or later you are going to pay a price. Any organization

in the world functions that way. How can you possibly put

everything that you need to do into writing? You know, you

spend your whole day, maybe you spend your entire career studying regulations. By the time you get to the end of the

book you forget the first part. How do you function? I'm not trying to argue with you. But there is this emphasis in other words that things need to be in writing, I understand that.

A: It's difficult, everything that we do seems to be challenged. The PSDA challenges things all the time. The attorneys are hired and they say, why is this, why is that, if it's a regulation that.....

Q: And that's why I asked you about the procedures with enforcement. That's why, not the substantive aspect of the regulation but the procedure. Did you know, did you ever hear of anything that the front office challenged the regulation or changed it or contributed to it in any way, Subsection C.

A: That's completely out of my area of responsibility. I know that it goes up there for signature, but whether it went back and forth for them to change, that is completely out of my....

Q: All the years you have been with the Pennsylvania State

Police, you don't know of any committee of officers, you don't know of any internal organization that deals with a

discussion or review of regulation changes, essentially, it's a Commissioner's function and authority, is that correct?

A: No. R&D, Bureau of Research and Development which

I keep referring to as R&D for the record, R&D, that's their responsibility. And then it goes up to the front office for

signature, approval. I know there is times when things come

back as far as this one, I don't have a clue. I'm at the

Academy in Hershey, it's out of my purview. I don't know

what happen other than my conversation with Sergeant

Q: Have you had occasion to contribute your ideas or

recommendations on other regulation changes in the past? A: Yes, that dealt with what was my responsibility, yes.

Q: Have any of those recommended changes or suggestions

that you made that went to R&D ever came back to you for review? 11

A: Yes.

Q: This one didn't. You never got a draft copy or rough

A: The ones that came back to me for review were ones that we had input into that we were revising, for instance, we have a regulation regarding our community services unit which is a unit under my command. If we are revising a special order or a command, then we make the revisions, we read them, we

send it up to R&D. Frequently, they call back and say, where are you going with this. We want to word it this way. So

that's the group. R&D is the group that analyzes all this stuff. Q: They help with the drafting of it. If you have a

recommendation or attention... We draft it, they improve it...

Q: One of the things that Sergeant Margeson told us is that they check on whether it conflicts with other regulations so that you don't have two regulations working with cross purposes, I suppose, that kind of thing.

A: That's correct.

Q: But when he, but when Sergeant Margeson got back to you, there literally, there was no discussion of any kind of conflicts or anything like that, it was just never been done before and there is a police void...

A: I don't know who he ran it by or who he met with, but when he called me that was what they planned to do with it.

Q: Again, these things seem like odd questions to you. What I had originally ask you about Major Washington, and

you indicated that when he called down there to the Academy,

you explained how people call down there not infrequently I guess cause they don't know where to call.

A: Right.

Why would somebody at a level of Major in the

Pennsylvania State Police who is in what Bureau, what was his line of work at that time, what was his authority area?

A: He was a Bureau of Director in the Bureau of Emergency and Special Operations.

What did they do?

They handle our SERT unit. Are you familiar with

SERT units.

Q: I know what a SERT unit is, in law enforcement, generally I know what it is.

A: Our aviation unit is there, our K-9 unit is there, Captain Davis is the Department Emergency Operations who works

very close with PEMA works there for emergencies. They're

our contact with PEMA whenever there's a state line

emergency, and there's some other special PEMA basic duties that don't come to mind right now. Basically, aviation, K-9, emergency operations, SERT.

Q: They interface with, I know they obviously have to interface with a lot of regulations? 12

A: With what?

Q: A lot of regulations. I mean those kinds of things aren't your day to day activities. You are talking about some very special functions.

A: Yes.

Q: But Major Washington didn't know where to call. Didn't know to call R&D? He called down to the Academy, but he didn't call for you personally. He just was calling down there

and you just happen to the guy that was answers the phone?

A: No. He had to go through the front desk. But whether he asked for me personally, I don't know.

Do you know him?

A: Yes.

How long have you known him?

40

Since about 1985.

Friends? I understand your professional callings. Are you friends? I'm not saying you are unfriendly, when I say

friends, let me explain what I mean, because it is ambiguous.

It is difficult to, you are in a professional organization

together, doesn't mean you aren't respectful and all that sort of

thing which you are supposed to be. You come across as a

very affable and congenial man and I compliment you for

that. You are a person that comes across as a very decent and

friendly man, so I'm assuming that you are friends with most

people or a lot of people. You have that kind of personality. I

do admire you. I wish I was like you. But I want to go a step further than that. Did you ever socialize with Major

Washington?

A: No.

Q: You've known him since 85?

A: That's correct.

Q: Have you ever been through any difficult police

experiences with him, problem out in the street, out in the

road, emergency, shooting problem, or something, anything

21

A: I met him when I was in Drug and Law Enforcement.

He was in Bureau of Professional Responsibility. There was

a trooper that they suspected to be on drugs and he came to us

for help, and I knew of him before that, but I never knew him

well, and we did an investigation which resulted in that

trooper getting a urine test and that's how I met him and never

worked in the same bureau or troop with him. That's about...

Q: I'm just having difficult trying to understand why a

Major Washington would not know where to call on

something like this, and that's why I'm asking. You don't

have any facts known to you that could help me understand

why he would I) call the Academy, or 2) not know how to

research it himself or have a subordinate in his own office do

that, or 3) why he would not call R&D himself. And fairness,

you don't know the answer to any of those questions.

A: No, you are answering that for me. 1) the Academy teaches regulations, so he would call the Academy thinking

we are up on regulations more than....

Q: The average place I would call in the State Police, you

would know what is being done.

A: He wouldn't call Troop A or Troop D cause they don't

know any more than what he knows, so the Academy teaches

regulations, so that's the answer to your first question, he

called there, because we teach regulations.

Q: And you told me in response to an earlier question that

you teach chain of command.

A: Yes.

You have a written curriculum or written materials

there...No.

A: That is why he was calling to find out what we have in writing and it didn't exist.

Q: You teach chain of command but you don't have any writings or instruction manuals, or any kind of instruction advisories, or any kind of courses that deal with chain of command. You do have, when you have your representative,

your coach out in the field... A: Right.

Q: I know that's like a probationary period, right? You have

someone that is an advisor to you. In that kind of situation

that person, at least some of the materials they have, I assume,

emphasize or indicate the need to talk about chain of

command or teach chain of command, right?

A: Correct.

So Major Washington calls and looking for what's taught

there, what the instruction materials are, but you don't have

any written instruction materials on chain of command that

you can think of at the Academy?

Correct.

And you couldn't of a regulation, he couldn't think of a

regulation, so you weren't really looking at R&D so much

because it was a case of finding a regulation as opposed to

asking somebody to write up something brand new. Is that

right?

A: When I couldn't find it, I asked Captain Gallaher and Major Einsel if they knew of anything and that was when

Major Einsel suggested I call Sergeant Margeson.

Q: Are you familiar with the Museum Committee?

A: Yes.

Q: What is it?

A: The state police are forming an official name that is

historical educational memorial center, and there is a

committee, a museum committee that filed for a 5013C, as a

non-profit organization and they are planning the museum,

they are buying property, they are going to build a museum

and they are going to display the state police memorabilia

from 1905 to the present.

Q: Does Commissioner have any interest in this, is he a

promoter, or supporter of it?

A: Yes.

Q: How long has he been a supporter, do you have any

A: Probably ever since he was, I know that the plans were

before he was Commissioner, but as far as I know he was

supportive of it almost from the beginning, almost from the

beginning of his administration as Commissioner.

Q: Is he a member of the committee?

No. I don't think so.

- Q: Who else in the Pennsylvania State Police hierarchy above you, not necessarily your chain of command, no punt intended, is a member of the museum committee?
- A: Colonel Coury comes to mind, you are talking about active members, not retired members, right?
- Q: I know that Colonel Tom Coury is..
- A: I think he resigned though, it was too much him, but he was for several years. Major Hayson was but he's retired
- now, Major Riggan, who is the president, but he's retired.
- Most of it is retireés because they were going to raise funds as
- a non-profit organization and the department didn't want
- active duty members involved in raising funds so all the
- active duty members resigned from the committee, not from
- the committee but from the board of directors, and it's now run by retirees or friends of the State Police; so to speak.
- Q: Are you still a member?
- A: No.
- Q: You can't be because, why is there a concern with conflicts or something?
- A: Well, I'm an active member and we don't want active members soliciting for funds because...
- Q: Okay, I see, any other conflicts you know of beside from fund raising aspect?
- A: With the museum?

sorts that difficulty out?

- Q: Yes, sir.
- 1. Q: I understand the conflict, but who sorts that out? Who
- A: There was talk about even if the statute of limitations is long expired on it or somebody bought it at a flea market,
- how are we going to prove that they stole it. There were a couple of people...one person comes to mind that had a huge
- collection of state police memorabilia and it was generally thought that he took that with him when he left the job.
- Who was that?
- A: A retired major.
- Q: Who?
- Dayo.
- Was he ever investigated?
- The last I heard he was in very poor health and his son
- had told some people that whenever he dies that son would
- donate that stuff to the museum and people pretty much-
- thought why harass this person who is in ill health, if he is
- going to be dying and we are going to be getting this stuff
- anywhere, so it pretty was put on the table. We don't even have a building to put the stuff in yet, in storage, it's a
- problem for these artifacts.
- Q: Was anybody ever investigated over where they acquired, or how they acquired any memorabilia?
 - A: Not to my knowledge.

- A: I haven't attended a meeting in a couple of years but, I mean when you say conflicts, there is...
- Q: Let me be more specific, Captain. Any conflicts or problems where the perceived interest of the company would collide with private collectors in their interest? Do you understand what I am asking?
- A: Not exactly.
- Q: Are there any disputes between the folks out there in the private sector to collect things, whether they are State Police members or not, and the committee and it's the committee's purpose?
- A: Well, there are several subcommittees, one is the building fund, one is the building, one is the, one of the groups is the memorabilia committee, who are task with people, almost from the time it was announced we were
- building a museum, people were calling wanting to donate things. So there was a committee that was in charge of, or
- responsible for collecting artifacts. And there were some retired members that had artifacts that were actually, not to be
- state property why does this person have this state property when it's really illegal to have it.
- Q: That's a problem for lawyers to sort out, not policemen,
- You ask for me for conflicts and that's...
- Q: Were any committee meetings devoted to a discussion of private collectors? Museum committee or subcommittees of
- the museum committee, ever? Let me phrase it again. To your knowledge were any meetings of the museum committee or any subcommittees of the museum committee ever
- dedicated to a discussion of memorabilia collectors?
 - A: No, not that I attended.
- Q: Did you ever hear about any?
- A: Did I ever hear about any private collectors?
- Q: Hear about discussions or meetings that the museum
- committee or any subcommittees of the museum committee
- had where issues regarding private collectors were discussed or dealt with?
- A: I thought I answered that, no.
- Q: I'm sorry, I probably didn't phrase it well. Do you know
- whether Captain Ober was ever discussed in any museum
- committee or museum subcommittee meetings.
- Q: Were you present at any informal, whether they were
- committee meetings or not, any informal discussions where
- museum committee work was discussed where Captain Ober was discussed?
- A: The only I ever heard about Captain Ober was
- Lieutenant Colonel Conti told me one time at the Academy,
- not at a meeting, we were having lunch, he was at the

- Academy because he was doing, he was coming into the Academy helping catalog artifacts that were donated. He was
- doing this with Sergeant Trout, and he told me that Captain
- Ober was a memorabilia collector.
- Q: What was the significance of that?
- A: I think we were competing against Captain Ober for collecting artifacts.
- You know whether that information was ever
- communicated to Lieutenant Colonel Coury?
- A: I don't know.
- Q: Do you have any recollection of Colonel Banko, or
- Lieutenant Colonel Coury suggesting or discussing
- investigations in the private collector, any private collectors?
- A: Know of none.
- Q: Never heard of anything like that?
- A: No.
- Q: You know whether, you have any recollection of
- whether Captain Ober ever delivered any artifacts or
- memorabilia to you or to the committee?
- A: Now that you have mentioned it, I think that, I do
- recollect Captain Ober calling me and saying he had some
- stuff for us, but I think I did find a box of stuff on my desk
- one day, I wasn't there when he came over and I came in and
- it had a note on it that said, "for the museum" and had Darrell
- signed on it.

- Q: Who did you give that to?
- A: I think, I think it was on my desk when I came to work.
- He told me for several weeks or months that he had
- something and I came to work and found it.
- Who did you give that to?
- A: I found it on my desk.
- Q: I know you found it on your desk. What did you do with
- it, I'm sorry, my question was poorly structured. Let me
- withdraw the question and rephrase it. I understand that you
- found some memorabilia in a box on your desk. What did
- you do with it?
- A: It was identified from Captain Ober. I gave it to
- Corporal Ratcliff who was the, I'm trying to think of the
- official term, custodial officer for museum equipment.
- Q: No problem. Do you have any recollection of any
 - newspaper advertisements having to do with the collections of
- memorabilia?
- A: No.
- Q: Do you know if any private collectors ever put
- advertisements in the newspaper regarding memorabilia?
- A: I heard that there is things on e-bay, but I don't know of any advertisements in newspapers.
- Q: Do you know whether the committée or any
- subcommittee or any member of the museum committee ever

placed an advertisement in the newspaper or any other commercial media?

- A: I don't think the museum is at the point yet, but I can't say that no one ever did, but none to my knowledge.
- O: Captain, I don't know if any of my questions have
- refreshed any recollections that you might have, but as I sit
- here today, you have no recollection of any discussion of
- anyone ever being investigated as to how they acquired or
- how they may have want to acquire memorabilia?
- A: If that was investigated by BPR, everything is so hushed
- up when BPR does investigation, it's confidential, things leak.
- out, but I don't ever recall ever that. But as I said I haven't-
- been to a museum meeting probably in two years.
- Q: Does the Pennsylvania State Police, they're not involved
- in the business of collecting memorabilia, are they?
- A: The State Police, our department?
- Q: Sure.
- A: No.
- Q: But if I come over there with a piece of memorabilia,
- something that may be of value and donate it, you have a
- place to put and keep it, right?
- A: We give it to the museum, now that we have a museum
- committee.
- Q: But that museum committee is not a part of the State
- Government. That's essentially a thing that you folks

- volunteered to do on behalf of your history and your comrades, right?
- A: It's a private corporation now.
- Q: That's what you told us. Right. Now there was time
- however when the public, I'm not suggesting that's wrong or
- a problem, but there was a time, apparently when the public
- purpose and public efforts were sort of mixed and it wasn't
- real clear that this was a private organization? If that doesn't
- fit you don't have...
- A: I don't quite understand the question.
- That's fine. In any event, during the entire experience
- that you had with the museum committee, you have, your
- testimony today is that you have no knowledge of the
- Pennsylvania State Police investigating whether it's a trooper,
- somebody in the private sector or if anyone else in the
- Pennsylvania State Police or associated with them, you have
- no knowledge, and you never heard of any information about
- anyone being investigated to find out how or why or what
- they collected as memorabilia. Is that correct? That's a
- blanket, you have no knowledge, you never heard of anything
- like that?
- A: That's correct with one stipulation just on not. There
- was State Police training cards on e-bay and Colonel, and our
- training cards are passed out by the community services,
- which is one the units under my command and Colonel Coury

53

sent a note down that he saw these huge amount, huge

numbers of training cards on e-bay and we investigated that and found out how they got there, so to speak. As far as your question, I know of no other investigation other than that that

we did on e-bay for the training cards.

Q: The situation with e-bay is probably a very proper thing to investigate. There is some indication that, whether there is a Pennsylvania State Police, or something in the private

sector, or indicates that there might be some wrong doing,

that's a proper subject of investigative inquiry, is that correct?

A: Training cards are not suppose to handed out except to children, a few at a time. No one should have collections, I

believe over a 100. No child could have collected that many, so that was what we were investigating, find out who has

these and how he got them.

Q: And it was worth investigating because there was some
 good probable cause reasons to check it out, right?

A: Correct.

Q: Have you ever known the Pennsylvania State Police of the museum committee or anyone on behalf of the museum committee to have conduct an investigation into anyone, any private collectors' affairs. By private collectors, I guess I mean any individual, into their affairs because of competition

with the Pennsylvania State Police or because as a way to

25 pressure individuals?

17

A: None that I know of.

² Q: And you have never heard of anything like that? I know

you didn't participate in it, that's very, very clear, but you

4 have never heard of anything, rumors or any discussions of

anything like that?

6 (silence)

Q: Do you have a recollection of Darrell Ober ever getting

8 in touch with you about photographing Academy items for

including in the centennial book?

A: I can recall Mark Insantino calling me for that purpose. I

don't recall Darrell calling me for that.

Q: What is this centennial book?

¹³ A: We are going to have our 100th anniversary in 2005 and

14 from my understanding they are preparing to have a book

with photographs from 1905 to the present, and there is a

16 committee that's doing that book and I know Mark Insantino

heads it; and I know he called numerous times to come down

to the Academy and take photographs. I know Rick Baker is

on it. Darrell may be on it but if he is I'm not...

²⁰ Q: Do you know if he was ever on it?

²¹ A: I can't say for sure.

²² Q. Do you know whether he was ever on it...Okay. You

don't know if he was ever on that committee. You ever been

on that committee?

²⁵ A: No.

Q: Is there any honor to be on that committee, is it something that is important to the Pennsylvania State Police.

Is it important to you as a Pennsylvania State policeman?

A: It would nice to have one of those books some day. It takes a lot of work to put one together, and it's all voluntary, so anybody that would be volunteering their time to collect all these artifacts, photograph them, go through books looking for items, it commendable.

Q: Darrell, do you have a minute? What we are going to do.
I am pretty much I think at an end. I don't know if your

attorney has any last questions. We are going to suspend here for just a second and soon as the videographer suspends we

are going aside, we are going to talk to Darrell a little bit.

Come back in and if I have any additional and the same are going to talk to Darrell a little bit.

Come back in and if I have any additional questions, I'll ask them at that point.

MB MADCEGA IV.

MR. MARCESA: It is now 4:23, we are going to suspend.

MR. BAILEY: This place is in operation at this time. I would like to thank you very much for coming in today.

Thank you for answering questions, I have no additional questions, if your attorney doesn't have anything, the deposition is not concluded.

MR. MARCESA: It is now 4:26 p.m. and it is October 23, 2001. This deposition is ended.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER

CIVIL ACTION LAW

Plaintiff

1: CV-01-0084

vs.,

(JUDGE CALDWELL)

PAUL EVANKO, MARK CAMPBELL, THOMAS COURY

JURY TRIAL DEMANDED

JOSEPH WESTCOTT, HAWTHORNE CONLEY JOANNA REYNOLDS and SYNDI GUIDO

Defendants

Proceedings:

Video Deposition Francis Koselnak

Date:

October 23, 2001

APPEARANCES:

For the Plaintiff:

Donald Bailey, Esquire 4311 North 6th Street Harrisburg, PA 17110

For the Defendants:

333 Market Street Harrisburg, PA 17101

Syndi Guido, Esquire

MR. BAILEY: You have to move that box of tissues. Major Stillwater. Is

there anything I can get for you Joanna?

MS.REYNOLDS: No thanks I'm fine.

MR. BAILEY: Now Tony we're awaiting you and then we'll move right

into this thing and get it done here. Make sure that's run back. You

started with a new tane right?

MR. MARCECA: Yes sir.

MR. BAILEY: Make sure your erase button is where it permits you to; I'll

bet that's it. You have to put it on VTR probably to rewind it. It's a

different camera, a professional camera; I don't have any control

11

10

MR. MARCECA: Ok, it's now 11, correction, it's October 23, 2001. 12

Good afternoon my name is Anthony Marceca. My address is 2219 13

Dixie Drive, York, Pennsylvania. I am employed by PR Video who

has been contracted to conduct this video deposition on behalf of 15

the plaintiff. This matter is docketed at 1: CV-01-0084 in the 16

United States District Court for the Middle District of 17

Pennsylvania. The caption is Darrell G. Ober versus Paul Evanko et 18

al. and this deposition this afternoon; the witness is Francis 19

Koselnak a Major with the Pennsylvania State Police. And Major 20

could you raise you right hand I would like to swear you in. Do you

promise to tell the truth, the whole truth, and nothing but the truth 22

so help you God? 23

MAJOR: I do 24

MR. MACECA: The time is 1:07 pm and this deposition is now in

2

progress.

MR. BAILEY: Thank you very much. Just on a voice check, Don Bailey,

counsel for plaintiff. We already have you Major. Joanna would

you?

MS. REYNOLDS: My name is Joanna Reynolds. I'm the assistant

counsel with the State Police and I represent the defendants in this

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MR. BAILEY: Ok. I assume that the usual stipulations that objections

except as to the form of the question will be reserved until time of

trial are ok

MS REYNOLDS: Yes 11

MR. BAILEY: Major I'll be very, very brief with just some instructions. 12

We're doing a deposition here. We're going to asking a number of different questions. From time to time if you become curious or

concerned about where I'm going with a question, what I want to 15

get at I want you to feel free to ask me. That's a little different than 16

the usual procedure but we really want to get a good accurate

record from you. If at any time you have not had an opportunity to 18

complete your response to a question for any reason, I may step in 19

thinking you have finished or whatever, might intervene. Make sure 20

you that you answer fully and completely because this is a record of

course that is going to be of your testimony we want to make sure 22

that it has everything in it and your answers are complete and 23 you're satisfied with that, ok? Remember to keep your voice up,

not that you're going to answer with gesticulation, through gestures

we have to have a verbal response you know. Anytime you want a

break or you want to break and talk to counsel, you're not allowed

to break and talk to counsel in the middle of a question, but

certainly I wouldn't object to any break that you want and certainly

if you have a personal reason for a break don't hesitate to ask.

Before we begin do you have any questions for me at all?

MAJOR: No I don't.

MR. BAILEY: All right sir. Major state your full name again for the

record please.

MAJOR: My name is Francis E. Koselnak.

MR. BAILEY: I'm just going to refer to you as Major. Is that ok?

12 A:

And you're a Major with the Pennsylvania State Police, and what 13 position do you hold with the Pennsylvania State Police? 14

I'm an Area Commander.

Very briefly tell us what an Area Commander does with the 16

Pennsylvania State Police. 17

Well, the Area Commander is the job description within the 18 A:

administrative regulation. Right now he acts as a liaison actually 19

between the executive office, which is the Commissioner, the 20

Deputy Commissioners, and the field. Certainly I make evaluations 21

to be able to determine how various programs are functioning and 22 operating and I provide advice to the executive office. Certainly I

sit in on disciplinary matters, and I guide troop commanders

concerning disciplinary matters involving their personnel on a troop

- wide basis. Certainly I attend meetings, conferences, and seminars
 to be able to promote certainly the position and to be able to
- 3 represent the front office.
- 4 Q: What's your jurisdiction right now? By that I mean what have you.
- 5 What's in your Chain if Command underneath you as an Area
- 6 Commander?
- 7 A: As an Area Commander I'm the Area Commander of Area Two.
- 8 Which is the Northeastern part of the Commonwealth of
- 9 Pennsylvania and sort of the northern tier. It encompasses Troops
- 10 F, which is Montoursville, Troop P which is Wyoming and Troop
- 11 R, which is Dunmar.
- 12 Q: Is the LCE under your jurisdiction?
- 13 A: No it isn't.
- 14 Q: And what is the LCE? Do you know what that is?
- 15 A: It's Liquor Control Enforcement.
- 16 Q: How long have you been Area Commander of Area Two?
- 17 A: Since July of 2000.
- 18 Q: Now before July of 2000 what was your jurisdiction?
- 19 A: I was the Director of Bureau of liquor Control Enforcement.
- 20 Q: How long had you held that position before you were transferred or
- 21 before you moved on?
- 22 A: I held that position from October of 1998 until July of 2000 so it
- 23 was approximately 19 months.
- 24 Q: How did Darrell Ober come to work in your Chain of Command?
 - 5
- Q: Three sections. Now he was transferred into that position you say in
- 2 February of 2000?
- 3 A: It was in February, I don't know the exact date but it was in
- 4 February of the year 2000.
- 5 Q: Well who commander of the west. Is there central, west, east? Is
- 6 that how it is?
- 7 A: That's right. There was a West there was a Central, which Captain
- 8 Ober was commanding and of course there was an Eastern section
- 9 also.
- 10 Q: Who commanded the West?
- 11 A: Lt. Ryan commanded The West.
- 12 Q: Lt. Ryan?
- 13 A: Right.
- 14 Q: And how about the East?
- 15 A: The East was commanded by, you know I tell you what I just forget
- 16 exactly but it was a Lieutenant that was commanding the East.
- 17 Q: What the significance of that, what do you mean a Lieutenant, what
- do you mean?
- 19 A: Well I'm saying that there were, there was a Lieutenant in the East
- 20 and I don't know his name. That's why I'm referring to him as
- 21 Lieutenant.
- 22 Q: I just wondered why you responded that it was a Lieutenant. Is
- 23 there some reason?
- 24 A: Well it wasn't a sergeant, you know that's his rank and I don't
- remember his name.

- A: He was assigned to be able to work at the Bureau I believe it was in
- 2 February 2000,
- 3 Q: Well my question was how did he come to be assigned there?
- 4 A: He was assigned there by the department to be able to work at the
- Bureau of Liquor Control Enforcement.
- 6 Q: What does assigned by the department mean?
- 7 A: He was transferred. He came over, There was a transfer order that
 - was generated. He came over to the Bureau of Liquor Control
- 9 Enforcement to be able to be assigned to that position.
- 10 Q: And did you play any role in that assignment?
- 11 A: No I didn't.
- 12 Q: Were you asked about it?
- 13 A: I wasn't asked about it.
- 14 Q: Now your position, at the time of his transfer, your position was
- 15 what?
- 16 A: I was the Director Liquor Control Enforcement.
- 17 O: And what was your rank?
- 18 A: Major.
- 19 Q: So you're the director of LCE.
- 20 A: The Bureau Director, ves.
- 21 Q: And he was transferred to what position?
- 22 A: He was transferred into the Bureau. Into the central section
- 23 command position.
- 24 Q: Central Section: How many sections are there?
- 25 A: There are three sections of Liquor Control Enforcement.
 - 4
 - 1 Q: Well the East was commanded by a Lieutenant. The West was
- 2 commanded by a Lieutenant and the Central was commanded by a
- 3 Captain. The Central calls for a Captain? It's a bigger job?
- 4 A: No, it doesn't call for a Captain.
- 5 O: What does it call for?
- 6 A. Generally speaking it calls for a Lieutenant.
- 7 Q: Major how did you come to be the Director of the Bureau of LCE?
- 8 A: I receive the phone call I guess it was in October of 1998 to be able
- 9 to come down and be able to be interviewed by Colonel Evanko, to
- 10 be considered for a promotion.
- 11 Q: Ok and you were an Area Commander up in...
- 12 A: I was a Troop Commander sir.
- 13 Q: I'm sorry sir. Yes sir, up in the Eastern, Northeastern part.
- 14 A: Troop R Dunmar.
- 15 Q: Dunmar. I know where that is. Lackawanna County?
- 16 A: That's right.
- 17 O: Ok sir. So Colonel Evanko is talking to you about a promotion and
- has you come down to Harrisburg and that was when? It slipped my
- 19 mind there.
- 20 A: It was the early part of October of 1998. I don't remember exactly
- 21 the date but it was probably the first 10-12 days of the month.
- 22 Q: And he asked...I'm sorry sir, I interrupted you. And he asked you
- 23 or discussed with you your feelings, I'm sure out of respect for you
- 24 about taking over LCE, Right?
- 25 A: No

- Q: Ok, no he did not. Ok what happened?
 A: He offered the position to me. He said you know the position over
- at Bureau Liquor Control Enforcement is available and we have a

 position to be able to promote to Major and I'd like to be able to

 offer you that. Are you interested I being able to take it.
- 6 Q: And what was your rank at the time?
- 7 A: Captain.
- 8 Q: Now you said yes and you took the position. You agreed to take the
- 9 position.
- 10 A: Right.
- 11 Q: After you took that position were there any other changes of 12 command underneath you. By that I mean did Eastern, or Central,
- or Western Section Commanders change aside from the change that you experienced with Captain Ober?
- 15 A: Yes there was a, the Western Section Commander has transferred
- out and again I dou't remember his name and Lt Ryan transferred
- in. As far as the Command Staff was concerned there was several
- sergeants that left within that period of time. At least two that I can
- think of, positions that became available and people that were
 assigned to the Bureau of Liquor Control Enforcement.
- 21 O: And was Lt. Williams one of those people?
- 22 A: Well, Lt. Williams was there at the time.
- 23 Q: Did he leave at some point?
- 24 A: Yes he did.
- 25 Q: Where did he go?
- 9
- A: It was Lt. Colonel Westcott.
- Q: Now is he in your Chain of Command?
- 3 A: He was the Deputy Commissioner of Operations.
- 4 Q: And what did he do? Call you up and tell you you're getting
- 5 Captain Ober?
- 6 A: Yes he did.
- 7 O: Tell us how that conversation went.
- 8 A: He called. I don't remember exactly what date it was but in any
- event it was in February of 2000. And he gave me a call, and it was
- about 8 o'clock in the morning if I remember correctly. And he
- called and he says to me that Captain Ober would be assigned to the
- 12 Central Section in the Bureau of Liquor Control Enforcement.
- 13 Q: Did you ask him if that violated Department Regulations?
- 14 A: No I did not.
- 15 Q: Did you ask him why?
- 16 A: No I did not.
- 17 Q: Did he offer why?
- 18 A: No he didn't.
- 19 Q: What other Captains served under you as Section Commanders?
- 20 Well you've known Captains aside from Captain Ober that have
- 21 filled those positions, as Section Commanders haven't you?
- 22 A: I know the people that fill that position yes. Absolutely. Here was
- 23 Ryan and Williams.
- 24 Q: Well I mean people with rank of Captain. You know others don't

11

5 vou.

- A: He went over to the Bureau of Patrol.
- 2 O: Did he request that change?
- 3 A: No, he didn't request it.
- 4 Q: Who did request it?
- 5 A: I guess it's standard procedure under the type of investigation that
- 6 he was involved in. he would be transferred.
- 7 Q: Now the position for West, Central and Eastern Commanders, the
 - Section Commanders. There assigned for you out of the
- 9 department.
- 10 A: Yes they are.
- 11 Q: Are you ever consulted about that?
- 12 A: On an occasional basis I'm consulted but not all the time, no.
- 13 Q: Have there been any changes in those positions since Captain Ober
- 14 was changed into that position?
- 15 A: Yes.
- 16 Q: That's what he holds now right?
- 17 A: Any posts?
- 18 O: Yeah
- 19 A: I left in July of 2000 so I really don't know if there are any changes
- 20 since then, I really haven't been keeping in tune with that.
- 21 Q: Well who told you that Captain Ober was going to be assigned to
- that position because you indicated you were told that. You didn't
- 23 have any part in that decision.
- 24 A: No I didn't have a part in that decision.
- 25 Q: Well who told you that?
- 10
- A: That what? Fill that particular position?
- 2 Q: Yes.
- 3 A: In my tenure? No.
- 4 Q: Were you aware that at some point Captain Ober had filed legal
- 5 actions in Commonwealth Court?
- 6 A: I was familiar with an article that appeared in the paper and to be
- 7 perfectly honest with you I don't have any recall but I think that the
- 8 article had indicated that there was some action that was dismissed.
- And that was, you know to be able to put that into context whether
- it was pre or post February 2000, I don't remember.
- 11-Q: Well was there any scuttlebutt at all in the Pennsylvania State
- 12 Police about his
- 13 A: You know I'll tell you what I do make it a point not to listen to
- rumors because inevitably when you listen to rumors it's 180
- 15 degrees the other way.
- 16 Q: My understanding of their 70 some, 60 or 70 sections, aside from
- 17 your tenure and your personal do you know of any that were
- 18 commanded by a Captain in your experience?
- 19 A: You know I would really have to search back but typically I would
- 20 say no.
- 21 O: Ok, how many years have you spent with the Pennsylvania State
- 22 Police?
- 23 A: I'm in my thirty fourth.
- 24 Q: Wow that 's a lot of experience. You don't have a recollection of a
- 25 Captain other than Captain Ober as a section commander, as you

1		think of it?
2	A:	I never made it a point to be able to. You know certainly when
3		you're coming up through the ranks, you're not concerned with
4		what goes on in other troops you're concerned with doing your own
5		job. Certainly when you get in a command phase that's when you
б		become aware through conferences of different troop operations
7		and things of that nature. So in any event, certainly from that time
8		in my recollection I don't, and a field operation you're talking
9		about so you know, I don't have any recall of a Captain performing
10		as a Section Commander.
11	Q:	Do you have recollection of any unique problems in the Central
12		section?
13	A:	What do you mean by problems?
14	Q:	Ah, you just answered the question.
15	A:	In my interpretation, yes, we had problems.
16	Q:	What were they?
17	A:	I needed a Section Commander bad because It. Williams had been
18		gone, he's been transferred over to the Bureau of Patrol that had
19		been probably in or around September of 1999 and when that
20		happens we need to be able to back fill people. And what happened
21		was the Sergeant who was the District Office Commander at the
22		Harrisburg Office, district office, we needed to make him Acting
23		Section Commander. In his place we needed to be able move up a
24		Liquor Control Officer 3 or Supervisor to be able to be the District
25		Office Commander. And in that place we needed to be able to

assign a Liquor Enforcement Officer to be able to serve as Liquor Enforcement Officer Supervisor. That was my unique problem that I had. By being able to move Lt. Williams from that position and I recognize the necessity to be able to do that under those circumstances. I had a desperate need to have a section commander. I needed that position filled. Q: so consequently every opportunity I had I was looking to be able to promote that, to be able to get that position filled. Sure. Now did you have something to do with Williams leaving? 10 Q: Personally no. 11 A: 12 Q: 13 A: The department again based upon current regulations and the 14 circumstances that surrounded his case necessitated him o be able 15 to be transferred and I don't remember who signed the order. It would have to be either the Commissioner or the Deputy 16 Commissioner 17 Do you know why? 18 I do know why he was transferred yes. 19 Why? O: 20 21 Because of an allegation of sexual harassment against him. And consistent with the Governors Orders and the Governor's 22

memorandum we needed to make the workplace safe. That's why

All right. Is there some time that you served as head of PEMA?

14

he was transferred and removed from that position.

13

- 1 A: That I served as head of PEMA?
- 2 Q: Yes.
- 3 A: No.
- 4 Q: What's PEMA?
- 5 A: Pennsylvania Emergency Management Association.
- Q: What's that about? I know what the words mean, of course, but can
- 7 you tell us what it does in the state?
- 8 A: Well it's a, it's an agency that is designated to be able to put
- 9 together emergency operations in the event of a natural or man-
- made disaster. To be able to pull together all different resources
- from different state agencies to be able to focus upon the problem.
- 12 Q: Is it a priority in the Pennsylvania State Police?
- 13 A: Well I don't know if you would call it a priority but certainly we
 14 participate.
- 15 Q: Who's the director of PEMA?
- 16 A: I don't know.
- 17 Q: What role does the police, obviously this is not a State Police
- 18 organization, right
- 19 A: That's right.
- 20 Q: What role does the Pennsylvania State Police play?
- 21 A: We're one of the agencies within PEMA, and we have a desk there.
- 22 Certainly that's where we bring in the State Police resources into
- 23 that kind of an emergency situation, where there is direct contact
- 24 with the State Police and if we need to be able to certainly

.

- designate some law enforcement services or acquire some
- 2 information, that kind of immediate resource would be there.
- 3 O: Is it a permanent kind of a position?
- 4 A: No its not because I've seen other people come in.
- 5 Q: I don't know much about it that why these questions. If I ask
- 6 questions sometimes that seem to be rather silly it's because I just
- 7 don't know. It was a very poor question, let me withdraw it. What I
- 8 should have said is its not so much an as permanent position,
- 9 Major. It's a position where somebody fills it fulltime for the State
- Police or is it an additional position or something you do as an
- 11 additional duty?
- 12 A: It's an additional duty. It's an alternate duty that people volunteer
- for. And they participate representing the State Police within that
- 14 agency

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- 15 Q: My understanding is that Captain Ober was at some time or at one
- time was involved with PEMA and the State Police. That is from
- my interviews and investigation into the case. Do you have any
- 18 knowledge of him being involved with PEMA or being a PEMA
- 19 representative for the State Police?
- 20 A: From what Darrell told me yes.
- 21 Q: Ok, what did he tell you?
- 22 A: It was in February there whenever he was assigned to the Bureau
 - and he approached me to be able to determine if he could continue
- 24 his assignment to PEMA. My first reaction was I wanted him to be
- 25 able to focus on his position there at the Bureau rather than to be

able to be, you know, certainly than to be accepting responsibilities somewhere. In any event, I says let me give that one some thought. Let me look at it, evaluate it. So in any event he told me he was involved in it. I forget if he said he was involved in it several years from his previous position that he'd been associated as a representative of the State Police over at PEMA. So you thought about it. You considered it. O: A: Q: In the process of doing so did you find out that indeed he had been assigned to PEMA? 10 I found out he was assigned to PEMA, yes. 11 A: Did you talk to anyone about that? Q: A: 13 Who did you talk with? 14 O: I spoke with Major Washington who was at the time the Bureau 15 Director at the Bureau of Emergency and Special Operations for the 16 17 State Police. That's where the emergency operations officer from the State Police is permanently assigned. I don't know if it was 18 Captain Davis at the time but that's who it is now. So I gave Major 19 Washington a call and I said how critical is Captain Ober's position 20 there with PEMA? And he says, you know, as far as Captain Ober 21 is concerned it's not critical for him but it's important that we have 22 somebody there. And I said if he were not available what would 23 you do? And he said we would just post for another Captain. So in 24 any event I says I wanted to really find out if this was going to be a 25

not providing the authorization for him to be able to be involved, and he felt that it was not and he would just post for another Captain. So based upon that we may have had conversation, Captain Ober and I maybe a week, maybe two later and I told him at that time I didn't want him to be able to be involved in that maybe we would consider it maybe six months down the road we would look at it again but at this particular time I really wanted him to be able to focus in on adjusting to the new position as the Section Commander of Liquor Control Enforcement. 10 How would PEMA interfere with his focusing or adjusting in? 11 O: Well, ah, if you had any kind of critical event which would have 12 A: happened where he would have been required to perform his duties 13 over at the Bureau certainly he would be able to be at two places at the same time. And we would have lost certainly his contribution 15 there at the Bureau. And sometimes you have these events or at 16 17 least it's been my experience that these events have been prolonged for days and days at a time. I mean regrettably you know that's how 18 it happens; it's not over in an hour or two because certainly it needs .19 20 to be able to be addressed. So generally, you know, that's the 21 perspective that I was looking at from being the director of the 22 Bureau of Liquor Control Enforcement. Ok. Now if every director in the Pennsylvania State Police did what 23 you did there wouldn't be any PEMA. Pennsylvania State Police 24 would what, not participate in PEMA? Or do they have a choice? 25

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significant disadvantage to the State Police by removing Ober or

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Well, I think we could find a Captain someplace to be able to participate. There's no question. It just that I felt to myself with the Bureau, because I felt this was extremely important and for him to be able to get adjusted to the position. Maybe I would have reevaluated six months down the road. There's no question. Maybe we would have looked at it differently. The other factor I needed to look at, but I looked at it specifically from the operational point of view. That's what my decision was based on. The Bureau of Liquor Control Enforcement operates from funds from the Pennsylvania 10 Liquor Control Board and all of those funds and of course and what they support is supposed to be directed to be able to investigate 11 12 violations of the Liquor Code in the Commonwealth of Pennsylvania. We generally don't have people from the Bureau that 14 are assigned other places because this has got to be dedicated to the 15 process of being able to investigate the Liquor Code. But my primary purpose was strictly from operational reasons. 17 Q: And did, it was Major Washington at the time? 18 A: Did Major Washington tell you the position would be open six 19 20 months from the time you were denying Darrell the opportunity to 21 22 We didn't discuss that. A:

You didn't discuss that at all. Now did you ask him how Darrell

performed in that position?

No. No I didn't.

23

24

Q: You didn't ask him about it?

2 A: No.

3 Q: Did he offer?

4 A: N

5 Q: How long was this conversation?

6 A: Probably around two minutes. Three minutes.

7 Q: Did you, were you aware that Darrell Ober had held that position 8 before?

9 A: Yes.

10 Q: And did you know at that time how long he had held it?

11 A: No I didn't.

12 Q: Did you learn how he had lost the position?

13 A: No I didn't. What you mean lost? I'm assuming he'd lost this
14 position, at the time we had this conversation he was assigned to

15 the Bureau of Liquor Control Enforcement. Is that what you're

referring to? So in that respect I know how he lost it.

17 Q: How did he lose it according to your understanding?

18 A: Because I denied him the authority to participate.

19 Q: See my question is as a Bureau Director you had the power,

authority to be able to say he couldn't fill that position?

21 A: Yes, I did.

Q: And then see I asked you a question remember if every Bureau
 Director did that how would the Pennsylvania State Police come up

24 with anybody fro PEMA?

- Well I considered this position from my perspective as the Director of the Bureau of Liquor Control Enforcement to be able to be a very important position for him to be able to become familiar with the operational aspects of that. O: Now you've told us that and many times very clearly. But my question is if you're telling me in the Pennsylvania State Police that every Bureau Director has the authority to say no if they have a person that wants to hold a position like that. And my simple question is, I mean you're a Major, a very high level in the State 10 Police. A Major, how does the Pennsylvania State Police fill that 11 position? I mean you're response was "Ah they could go find a 12 Captain somewhere." Right? 13 A: Right. 14 Q: Don't they need somebody capable or competent to do that or is it 15 just sort of a wasted thing? 16 Well the person should be capable and competent to be able to 17 represent the State Police. Most certainly with the PEMA agency, 18 there's no question about it. But I don't think we were looking at 19 only one person being that competent and that capable to be able to 20 do that. I think there were other people in the department to be able 21 One would assume in an organization that large you would have 22 O: 23 one competent person to be able to do a job like that. Did you learn 24 at anytime how long Darrell had held the position?
- O: Did Major Washington tell you he had lost the position because he had been unlawfully transferred to Washington Pennsylvania? I didn't know he had lost the position. Well you had indicated when I'd asked you about what had occurred between you and Darrell Ober that you were going to look 8 into it. I'm just wondering the extent to which you did. 9 I did. That's exactly what I did. I picked up the phone whether it 10 was that day or whether it was the next day when I had the time to be able to do that. I called Major Washington and I wanted to know 11 how critical Captain Ober was to being able to perform these duties 12 13 as the representative of the State Police. And of course he indicated to me that Captain Ober was not critical, himself as an individual 14 personally to be able to perform those duties. And that anybody 15 else would be able to be trained and to fill that position without too 16 17 much of a problem. 18 He told that anybody, a lot of people could do this. It isn't, there 19 isn't anything unique about Captain Ober in the Pennsylvania State 20 Police that we need him for this. Isn't anything personal, there's 21 nothing personal to him that we need Captain Ober for this position? Right? 22

Did you, did Mr. Williams, Major

A:

23 A:

25 A:

Q:

A:

A:

5 O:

6

8

Right.

Washington.

21

No I didn't, I don't know how long he held it.

25

22

Who was Captain Ober's immediate superior at the OCE?

It would have been Captain McDonald.

Just tells him what to do?

Give me another example.

Just tells him what to do, exactly.

where there were other Captains.

Thirty-four years in the Pennsylvania State Police?

I could probably relate it to myself, serving on some committees

No, not committees, Major Chain of Command. Give me another

- O: Captain McDonald. And what level was that? He would have been the Division Director. Division Director? O: Division Director, right. A: Now how many divisions are there in the Bureau? O: There are two divisions in the Bureau of Liquor Control A: I don't know quite how to explain where I'm coming from. When I 0: was in the service I had an opportunity as a Lieutenant to be a Headquarters Company Commander, ok. The battalion commander 10 11 put me in that position as a First Lieutenant. Now I had Administratively, which means I would look after their 12 13 administrative needs Captains underneath me. They certainly did not respond to me in terms off orders. You know what I mean? 14 They responded directly to the Battalion Commander who was a Lt. 15 16 Colonel. This is in the army. Now what I'm trying to understand 17 based upon what I just learned from you. You've got a Captain, is 18 this a case of a Captain giving orders to a Captain? 19 A٠ 20 O: That seems, now it's one thing to say you're looking after 21 somebody's administrative needs because you're in a position that 22 requires you to perform just purely administrative duties I guess. 23 But this is a Command position. How does a Captain command a
- example of Chain of Command. 9 10 You know I would have to be able to really think about that, there's 11 nothing that comes, I mean you're talking a typical field operation. I'm talking about Chain of Command. I'm not. As I said to you 12 O: before, I got a Lt. Colonel he says Lieutenant Bailey you're going 13 to do this. I say, "yes sir" and I do it to the best of my ability. Now I've got a senior Captain who is an S-1 let's say or an S-5. 15 16 A: I don't know what that is. 17 O: Well that's a certain function. You know, Intelligence or Operations or Property Book Officers different things. I didn't give 18 19 them orders on what to do but I was involved in a lot of 20 administrative tasks. In other words, they reported to the Battalion 21 Commander, Headquarters Company administrative tasks, it's a 22 dual thing. The Chain of Command comes from the Lt. Colonel 23 directly to those section captains so there's no violation of the Chain of Command problem, let's say as a practical matter by

Captain?

Very easily.

having a Lieutenant be the head of the Headquarters Company.

23 A:

24 Q:

25

O:

A:

that you had somebody.

I was very pleased.

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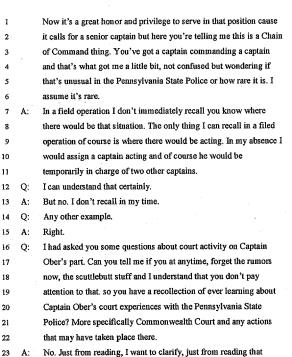
20

21

22 Q:

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suit, I think it was dismissed. I just briefly read the article and you know, time is to valuable to waste in that area. If there is something the department wants me to deal with they'll let me know. And rumors as I say they certainly serve no purpose at all. Q: Yes sir. Major did you ever wonder why Captain Ober was put in 5 that position? 6 No I didn't. 7 A: Did you consider it unusual at all? I understand you had a great need. 9 Exactly. 10 A: For somebody in that position and that was an immediate command 11 concern that you had. And that was a source of frustration to you 12 not having somebody in that position. You needed somebody to do 13 14 that job. 15 A: That's correct. 16 O: But the Pennsylvania State Police has thousands of people in it, better than four thousand I think. 17 About 4200 18 All right sir. Now remember when you had called PEMA and you 19 talked to Major Washington and you said you know we need Ober 20 to fill this position at PEMA and you reasoning being I need him 21 here to focus on this. Right? 22

Are you testifying that the Pennsylvania State Police couldn't find a

When, how did you first learn that Captain Ober was assigned to

lieutenant for the section? For the Central section?

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article in the paper. And I don't remember exactly when that was,

whether it was post or pre Captain Ober coming over where that

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- I never made that kind of a search for anybody else. Whenever I was called and said that Captain Ober was going to come over, to be quite frank with you I was elated. That's exactly what I told him. Should be elated to get and officer of that quality, I would be too. With the experience that I had with him and certainly the respect I A: had for him that he was going to come over. And from the time Lt. Williams had left, like I said, every opportunity I had I made it a point to mention to Colonel Westcott how important that position was there. And the fact that it was vacant and that three other people were effected in there positions and that certainly we were 10 compensating, you know those other people also to be able to perform in the higher pay scale. So as I say it was very important to 12 be able to fill that position. So when he called me to be able to 13 assign Captain Ober there certainly I was very satisfied with that. And you never at any time suggested to Colonel... 15 O: Colonel Westcott. 16 A٠ Colonel Westcott or anybody above you in the Chain of Command 17 that you needed a captain for that position? I said I needed the position filled. 19 A: You just needed somebody. Right. You didn't suggest it be a 20 O: captain, a sergeant, a lieutenant, a major, a colonel, a commissioner 21 or anything else. You just, I need somebody to do this job because I 22 got work to be done and I need things done. 23 Right.
- you at the LCE? As I say it was in around February, I don't recall the exact date but A: in any event I received a call from Lt. Colonel Westcott. It was in the morning I'd say it was someplace around 8 am or someplace in and around that area and he said that Captain Ober would be coming 0ver to be able to fill Lt. Williams position for the Central Section commander. That's how I first learned about it. And how long was that conversation? 10 A: Probably around 45 seconds. Less that a minute I'd say. Holy Cow. 11 Q: It was a matter of him pushing information to me and me certainly 12 A: 13 me understanding the information. O. 14 And acting, in fact Captain Ober was there that morning. So I 15 assumed he came in to be able to report, which I found out later, he 16 17

All right so that was he called you up and you're not the type of

fellow to beat around the bush and ok fine and you were pleased

Why were you so happy or pleased? Did you know Captain Ober?

Not that I've had that much experience with Captain Ober but

certainly we did get a chance to be able to work on a committee

about four years before where there were about fourteen or fifteen Was that the museum committee? Q: No. It wasn't the museum committee. Q: Or what was it? It was the Legislative Reference and Budget Committee. We were reviewing the report and I felt he had done some excellent work there. I was a captain at the time we worked together along with twelve, fourteen other people. And like I said I thought that it was an excellent contribution that was made be everybody and that's when I first really directly worked with Captain Ober? 11 What was his rank then? 12 O: He was a Captain. Q: And your rank was? I was a Captain. 15 A: O: You were a captain and that was before you took the LCE? 16 Yes, I want to be able to think and tell you when that was. I'd have to be able to stretch and don't hold me to it. But it think it was 18 around 1996 19 Was Captain Ober the kind of Pennsylvania State Police member 20 Q: that really put his heart and effort into working toward that 21 committee effort that you worked on there? 22 23 A: And had a good positive attitude about working with his colleagues 24 O: 25 to get things done?

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does he come from? I think he was in R&D at the time, you know. I know we shared some stories together. But no I don't make it a point to be able to listen to rumors like I said, really don't. Right. Well, I know you don't listen to them. But now and then they have a way of imposing themselves on us because we are at the wrong place at the wrong time. Do you remember any rumors about Captain Ober? A: As someone who, you're his commander at this time are you not? O: We don't. We're not working directly in the same Chain of 10 A: 11 I'm sorry I keep forgetting that you left there. During the time that 12 O: 13 you were his Commander, his, you were in charge, you were in his direct Chain of Command. Now you're not in his direct Chain of 14 15 Command now That's correct. 16 A: 17 And forgive me I keep forgetting that you made the change to the area from the Bureau. Anyway during the time that he, let me just 18 19 use a common phraseology, he worked for you. During the time he worked for you and you were his, you know. Did he perform his 20 duties satisfactorily to you, for you and perform them well to the 21 22 best of your knowledge? At the time that we directly worked together? 23 A: O:

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A:

Yes absolutely.

And isn't it fair to say he treated you with the utmost respect as a colleague? I think so. A: Q: And hasn't he always treated you with the utmost respect? Absolutely. A: END OF SIDE ONE - TAPE ONE Major you did learn at some point that Captain Ober had been sent 12 out to Washington, Pennsylvania. I'm from western Pennsylvania. You're from the hard coal and I'm from the soft coal. And we call it little Washington out there. We don't mean Washington, DC or 15 anything thing like that but you would know of course because 16 you know the whole state. Did you know why Captain Ober was sent out to Little Washington? Why he was sent out there? No I didn't. 19 Α: Did you ever have any conversations with anybody either at your 20 level of rank or above you in the Pennsylvania State Police about Captain Ober and any of his personnel experiences or assignments? 22 You know what? I probably did I just don't recall having those kind 23 A: of. I know probably at the time we worked together in 1996 I probably asked around, you know, who was he? You know, where

In your view was he somebody you were proud to call a colleague?

I think he had.

Oh absolutely.

A:

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At this time let's suspend and Darrell and I step outside. This is a process I do. I think we're pretty much near the end-of this. I need to review a couple of things with him and your attorney may have some questions for you. MR. MARCECA; The time is 1:53 P.M. and we're going to stop the film while the attorney confers. BREAK. MR. BAILEY: Ladies and Gentlemen please be advised that there is a recorder running. We're, at this point; I'm sorry, let me conclude here just for a second on that, please. Major Koselnak I'd like to 10 11 thank you very much for coming here today and answering questions. At this time I don't have any further questions for you. It 12 would be up to your attorney and I understand, Joanne do you? 13 MS. REYNOLDS: I have no questions. 14 MR. BAILEY: Thank you sir very much. Your deposition is ended. You 15 have to wait here until he shuts down this infernal machine. 16 MR. MARCECA: Ok, it's now 2 P.M. 10/23/01 and this deposition is 17 18 now concluded. Thank you. 19 21 22

IN THE UNITED STATE DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER

CIVIL ACTION LAW

Plaintiff

1: CV-01-0084

VS.,

(JUDGE CALDWELL)

PAUL EVANKO, MARK CAMPBELL, THOMAS COURY, JOSEPH WESTCOTT, HAWTHORNE CONLEY. JOANNA REYNOLDS and SYNDI GUIDO

JURY TRIAL DEMANDED

Defendants

Proceedings:

Video Deposition

Walter J. Margeson

Date:

October 23, 2001

APPEARANCES:

For the Plaintiff:

Donald Bailey, Esquire 4311 North 6th Street

Harrisburg, PA 17110

For the Defendants:

Syndi Guido, Esquire 333 market Street Harrisburg, PA 17101

- MS. REYNOLDS: My name is Joanna Reynolds and I represent the defendants in this matter.
- MR. BAILEY: We're ready to go, just a couple of preparatory
 - things. Again I want to advise everybody while we're on the record
- there are microphones in the room. They are being used to pick up
- sounds, etc. if at any time there's a desire for counsel for the
- witness or the defense counsel or the witness to confer, and I
 - understand for the purposes of this deposition that Ms. Reynolds is
- representing you sir, my advise would be to make sure before you
- say something back and forth that you be sensitive to these
- microphones. That they can pick up sound, they're quite sensitive
 - and we don't want to interfere with any of your rights or invade any
- privileges. I would assume that the usual stipulations that
 - objections except as to the form of the question be reserved until
- the time of the trial would be acceptable. Is that all right, Joanna?
- MS. REYNOLDS: Yes.
- MR. BAILEY: Just a few preparatory remarks here. A little bit of
- advice before we begin here, Mr. Margeson. My technique in
- doing a deposition is I want a witness to feel comfortable. I do
- everything in my power not to be confrontational or difficult. The †
- other thing that I do that is different from most attorneys, at least in
- my experience, is that I want to encourage you if you have any
- question about a question that I ask, or you have a question about
- where I'm going with a group of questions, I

- MR, BAILEY: At this time the microphones are live.
- MR. MARCECA: Tony, whenever you begin we'll go through this
- process. And I'll get her done here.
- MR. MARCECA: We are live and Good Morning my name is
- Anthony Marceca. My address is 2219 Dixie Drive, York,
- Pennsylvania. I'm employed by PR Video who has been contracted
- to conduct the deposition on behalf of the plaintiff. This matter is
- docketed at 1:CV-01-0084 in the United States District Court for
- the Middle District of Pennsylvania. The caption is Darrell G. Ober
- versus Paul Evanko et al. If you'd please stand I'd like to swear 10
- 11
- MR. BAILEY: Get back so you know who's on the camera. You can
- 13 just sit down there
- 14 MR. MARGESON: Are you sure?
- MR. BAILEY: Yes, I want to keep the thing on you.
- MR. MARCECA: State your name please.
- MR. MARGESON: Walter J. Margeson.
- MR. MARCECA: Do you swear to tell the truth, the whole truth and
- nothing but the truth so help you, God.
- MR. MARGESON: Yes sir.
- MR. MARCECA: We are now live and it is 10:02 am.
- MR. BAILEY: Ok, get a sound check. My name is Don Bailey. I'm
- representing the client. I represent the plaintiff in his matter. 23
- Trooper, I think we already have a sound check on you. Joanna
- could we get you.

- want you to feel free to ask me. I do not mind for you or your
- attorney, I don't mind sharing where I'm going or what I'm about in
- trying to get a response from you. I learned a long time ago that tricky
- TV stuff doesn't work and it doesn't produce a positive desirable result.
- In that regard if I interrupt you before you finish a question or something
- else interrupts you, even something in your train of thought and you do
- not have an opportunity or don't enjoy an opportunity to complete a
- question, please make sure you either stop me, or correct me or come
- back to it and get a full and complete answer. Your oath requires
- naturally and accurate and an honest answer. It also requires a full
- answer. In generally, if you need to guesstimate or guess something it's
- all right to condition a response but you should not speculate wildly. And 12
- hypothesizing is ok but again it should be confined to the relevance of the
- question and it should be limited in scope, and you should say, 'My best
- recollection' for example is fine. And lastly, if I ask a question, and some
- 16
- of the questions that I ask is because I haven't walked in your shoes, may
- seem foolish or may not even seem relevant, do your best to respond and
- answer them. Make sure you keep your voice up and make sure you
- answer verbally. Ok? All that gobblety-gook out of the way, do you have
- any questions for me before we begin?
- 21 MR. MARGESON: No.
- MR. BAILEY: First of all, I'd like to welcome you here and thank you
 - very much for coming to respond to questions. Do you have, Sergeant,
- you like me to refer to you as sergeant?
- A: Yeali that's ok

- 1 Q: Sergeant Margeson just tell us very briefly where you are employed, for
- whom and what you do. Just a little bit of background.
- 3 A:Currently I am the Systems and Procedures Section Supervisor in the
- Bureau of Research and Development. Basically, what that means is that
- the department's policies, procedures, regulations, directives come
- 6 through us on their way to the front office for approval, and we prepare
- 7 them for dissemination to the field. I mean that's not entirely what we do.
- I mean we manage the department's accreditation, we have an
- accreditation program, and we work with them, forms and records
- management. All those things that deal primarily with the department's
 - regulations and directives.
- 12 Q:Ok, now I'm going to have some questions for you a little later on about, I
 - put a little quote down here from you about "systems and procedures" and
- we're going to talk about that. You're a Sergeant, how many years have
- you been with the Pennsylvania State Police?
- 16 A:Fifteen years.

11

13

- 17 Q:How many years have you spent in working in this area having to do with
- regulations, disseminating regulations and the procedures that have to do
- 19 with adopting and developing regulations?
- 20 A:I was assigned there, initially as a project person, in June of 1991 and I
- have been there as the section supervisor since March of 1993.
- 22 Q: All right now, let me try to get into a few more specific questions having
- 23 to do with this lawsuit. In that regard, have you read, had the opportunity
- 24 to read the complaint in this matter?
- 25 A:No.

- 1 Q: Have you aside from, actually it doesn't make any difference to you as a
- witness, have you discussed this complaint or this litigation with anyone?
- 3 A: The fact that it exists and just superficially, not with any specificity but...
- 4 Q:That's good enough. So you haven't discussed with anyone any specifics,
- any specific fact or detail or focused on any particular aspect of this
- 6 litigation. Is that fair to say?
- 7 A:Yes, like I said, I've had like a couple different people in chief counsel's
- 8 office and with Darrell, just conversations about what was going on.
- 9 Q:With Darrell did have an opportunity to review a file or something, right?
- 10 Is that correct?
- 11 A:I don't know.
- 12 Q:Did he review a regulation in an AR file, having to do with organization
- 13 or AR 1.
- A:I don't know that. Not while I was on. He didn't get it from me if he did.
- 15 Q:Ok. Did anyone see that file?
- 16 A:There's been lots of people see that file lately. It has been pulled by our
- 17 clerical staff in response to requests from your office to the office of chief
- 18 counsel for specific information.
- 19 Q:Has it been, where is the file kept?
- 20 A:Currently, I have it secured in my office.
- 21 Q: I'm an old army guy and also an old auditor general. Where are the,
- are the files, do they ever leave your office for any reason?
- 23 A: Not normally. Normally the historical files and that's what this is, this
- 24 is an historical file for a regulation that was promulgated out of the
- 25 Bureau of Research and Development. Normally those files are kept in a

- specific area in our division area. It's a series of filing cabinets and
- 2 historical information for everything we publish is maintained there by
- 3 subject matter. This particular file, because of what's going on to insure
- 4 the security and integrity of the file has been secured in my office for
- several months.
- 6 Q:Ok. Now let me ask you this, Sarge. The way your files are kept, are
- there any security regulations regarding how they're kept? Now let me
- tell you, let me give you a little offer and tell you where I'm going. What
- I want to find out is how somebody comes in to access a file, whether
- somebody can take portions of it out, whether they have to sign it out.
- You're familiar with concepts like Evidence Rooms; everybody knows
- what a library does. A library has accountable records that list and
- provide access to files or books, or publications and you can sign them out
- and leave. I'm looking for your procedures and whether there are
- documents that can tell us when and what. What people look at and when
- they do it, and identify them as to who looked at it.
- 17 A: The department has a regulation that talks about when you take a file out,
- 18 generally, anywhere, whether it's an investigative file or any kind of file
- there's a charge out card that's supposed to be filled out.

 20 Q:That's what I'm looking for. Tell me about that.
- 21 A: Well, that's normally if you're going to take a file from it's location and
- keep it for any period of time, that's normally the procedure. The
- historical files, we use that, if in fact that is the case but that is not
- 24 generally the case with historical files. Normally, what they're reviewed
- 25 either by myself, the clerical staff or people who are working with the file

- right in that location. They're not removed to any office. They're not
- kept out for an extended period of time.
- 3 Q:Can we talk about that for a moment?
- 4 A:Sure.
- 9 Q:What you're telling me is that someone can come down to the file room
- 6 where these files are kept and as in a typical library they can deshelve,
- 7 they can take a file or a part of a file and sit down at a table and they can
- 8 look at it. Is that correct?
- 9 A:If you knew where the file was. Normally the procedure is you ask either
- me or one of the clerical people. They'll pull the file for you, and you're
- correct, that you're free then to look through the file. And those are pretty
- common requests. People from all over various organizational segments
- who are looking for historical background on why we're doing something
- 14 a certain way. Why something is changed.
- 15 Q:Would it have to do with litigation? Could it even have something to do
- with somebody modifying or changing or speaking to an issue in a file?
- 17 Right?
- A: That's exactly right. And there's nothing secretive about the historical
 - files. They merely provide a foundation for why we're doing the things
- we're doing. And they're open to pretty much anyone who would come
 - in would be able to review a file.
- 22 Q:For example, Don Bailey would be welcome over there to look at files
- 23 anytime.
- 24 A:Well,

- Q:Let me ask you a question. As part of the historic file is there some kind
- of document that goes along with the historic file that indicates what's
- done with the file, who looks at it and when changes are made to it?
- 4 A: If I understand what you're asking is after the file is completed as a
- 5 historical file, is there then some reason to track who looks at it when? Is
- 6 that what you're asking?
- 7 Q:Let's go at it bit by bit then try to put it together. In the case of the
- 8 regulation that we're talking about here, which is AR 1-1, ok? AR 1-1, I
- am personally familiar with, just based on cursory research that I have
- done, AR 1-1 has an effective date, or had an effective date of sometime
 - on or about July of 1997. Am I correct?
- 12 A:The current AR 1-1?
- 13 O:No sir. Prior to the latest revision it had an effective... All right what was
- 14 it?

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- 15 A:I don't know.
- 16 Q: All right. But when a revision is made to a regulation it must undergo, in
- order to conform to Pennsylvania State Police procedural regulations, it
- must undergo a certain process, a review and approval process. is that
- 19 correct?
- 20 A:Yes sir.
- 21 O: Now for example, let's say someone who is a Lieutenant, a lieutenant in
- the Pennsylvania State Police goes down and wants to review a historic
- 23 file, maybe on their day off. Let's assume for the sake of argument
- there's no reason other than they want to propose a change, a
- recommendation to a regulation. I would assume they would have access,

- be able to just go in and read and review that, or maybe they're doing it
- 2 for a course they're taking in school somewhere. That kind of thing.
- 3 They would be allowed, right?
- 4 A:Right, I mean there are exceptions to that.
- s Q:Ok, but they certainly would not be allowed to place proposed changes or
- to authorize changes to that regulation without going through a review
- 7 and approval process of some type? Is that correct?
- 8 A: Normally, and again just to follow your line of thought here, at least what
- I perceive to be your line of thought, is if I were to review a historical and
- based on my review of that I perceive a need to change a procedure or
- policy then there's a procedure in place for that to occur, based on my
- review of that file. However my review of that file is separate from the
- 13 actual promulgation of that regulation.
- 14 Q: All right. Let's use your term. Let's use the term promulgation. Now, how
- to you define promulgation? I define it as what you go through to change,
- or create or modify an existing regulation. That's promulgation. That's
- 17 making a regulation or making a change. Right?
- 18 A:Right. That's the entire process.
- Q: All right sir. How, can you please give us an outline of that process?
 A: Well, it can take on several different forms. A regulation can be revised or
- proposed to be revised. And we need to understand too that not every
- proposed revision is approved. You know, we use the suggestion program
- to address policy issues. We use what we call Regulation Revision
- 24 Requests, which are forms filled out be personnel in the field who are
- actually using the regulations who say, I think there is a conflict between
 - 10

- this and this, would you please take a look at it. We'll review it and if
- there is then we initiate the necessary changes or we contact the content
- owner for them to address those issues. A change may be made by a
- 4 content or process owner if, let's just for example say, there's a change in
- 5 the procedures for the laboratory for the acceptance of evidence. They
- would initiate that change in the form of a proposed regulation to say
- 7 0177, they would send that through their Chain of Command to R&D and
- a our job then is to review that for conflict, clarity, content, those kinds of
- 9 things.
- 10 Q:Hold it right there. Somebody makes a proposal for a change and the job
- that you have is not only to see that procedural safeguards are followed
- but also one of your jobs would be to provide support services in the form
- of researching and advising. Not that you change anything, not that you
- assume the responsibility to do that but advising on the wisdom, maybe
- this proposed changed to subsection B would have the effect of maybe
- interfacing with or conflicting with subsection C of section D. Something
- of that sort. Right? And it's sort of like a legislative or drafting bureau
- 18 function. That's what your job is to do. Right?
- 19 A:Right.
- 20 Q:Do you ever get a legal opinion?
- 21 A:Certainly.
- 22 Q:Where do you go for the legal opinion on that revision of that proposed
- 23 change?
- 24 A:All of our legal opinions come from the Chief Counsel's office.

- Q:Let's say that proposed change comes to you from a trooper in the field. Is
- 2 it your duty and responsibility to disseminate that proposal to a certain
- 3 group of people, decision-makers?
- 4 A:Depending on what the change is.
- 5 Q: Well, let's take AR 1-1. Now if I want to add, my understanding is that
- sometime in February there's a subsection C added to this.
- 7 A:Correct.
- 8 Q:Of 2001, February 22-23, I think is when the final authorization was.
- 9 Let's say I want to make that recommendation. For the sake of these
- questions you can assume that I have a shallow, not anything that can
- match your own a shallow knowledge of the history of that regulation.
- Ok? And also that, I think, I have some views certainly on the role of
- 13 Chain of Command and I've interfaced with a whole lot of laws including
- Constitutional Issues which I find fascinating. But as far as this particular
- proposal is concerned, isn't it correct that subsection C would be
- submitted for some type of legal analysis somewhere is that correct?
- 17 Within the Pennsylvania State Police?
- 18 A: Not necessarily.
- 19 Q:Not necessarily. Ok. But if it were, Sergeant, if it were, would that be
- reflected in documents in the historic file? And you're going to tell me not
- 21 necessarily.
- 22 A:I'm going to tell you it's supposed to be.
- 23 Q:Supposed to be. By what regulation, custom, practices are you using? Can
- 24 you tell me?
- 25 A:That's an internal policy in the division.

- Q:Is it written down somewhere?
- A: Well, it's written down in the form of a, I don't want to call it a handbook
- because it's only a couple pages long. But it's a procedural outline for...
- Q:I want to make a note of that. What's it called sir?
- A: It's not called anything.
- Q:lt's not called anything.
- A: Yeah, when new people come in, project people, who are going to be
- working on these regulations, I give them something that I've prepared
- that just says these are the things you need to check, these are the things
- that you need to do.
- Q:Did you prepare it?
- 12 A:Yes, I did.
- Q: Thank you sir. I would like to get a copy of that. If Joanne could make a 13
- note and we'll be doing a document request. I'd like to look at that.
- MS.REYNOLDS: You're going to put that in a document request? 15
- MR. BAILEY: Yes, I will.
- A: And further that is followed up with a, we meet with the project staff on a 17
- fairly regular basis, I do. Parts of those meetings are to insure that they're 18
- doing, they're capturing the information they need to caption on, and we 19
- have what we call project-tracking sheets. It's supposed to be a step by 20
- 21 step history of everything that is done with that project whether it's a
- telephone call or a note, a meeting, correspondence that's received, 22 23
- information that's received relative to that project, e-mails that are transmitted, those are all supposed to be captured. And just like 24
- everything else in life including the department, some are more

- conscientious than others at actually capturing those kinds of things that
- are perceived at the time to be unimportant.
- Q:Sarge, we need you in Washington. Let me ask you something. The short
- of it is folks don't always keep or contribute to those records or that
- tracking history. Right?
- A:That's correct.
- Q:That's the truth. But, there is an established policy and requirement that if
- you're going to remove files from the file room down there you've got to
- sign them out.
- A:That's correct.
- Q: And that's done physically.
- Q: And that's something that is, I would assume, enforced to the best of your 13
- 14 ability down there
- 15 A:Yes
- Q: And that means that even if the Commissioner gets a file, assuming 16
- 17 somebody picks it up for him of course, it's going to be signed out or
- identified as to who picked it up and where it goes? Right? 18
- A: Normally anyone like the Commissioner or Command Staff would 14
- approach the clerical staff. They would pull the file and they would
- prepare the card for that. You know, you're not going to ask the 21
- Commissioner to "Oh you have to fill out." The Commissioner owns all 22
- the records of the State Police:
- Q:No, no I understand that response.
- A: Well from my standpoint.

- Q:I understand he's the boss.
- A:Right, so if he comes to take a record I'm not going to make him sign for
- it but someone is going to prepare a card that says this was picked up by
- the Commissioner on this date and put that in there.
- Q:Ok, and that's a process that's respected. It is an understood procedure by
- all that work there. And you know if somebody failed to do it but was
- seen taking a record or a file out, as you said, somebody just came down
- and you bumped into some problem where somebody picked it up and failed to do it. Efforts are made to keep that file intact in terms of where it
- is and who has it. Right? 10
- A:Right 11
- Q: Are you allowed to come down there and add something to the file 12
- 13 without going through you?
- A:No. Well, actually a historical file you couldn't add anything to unless it
- 15 were something that you can identify as missing from the file, that should
- be there. But to come in later and add things to the historical file is not a 16
- normal practice
- Q: And how do you keep the records of what is in a historic file. Is it hard
- copy or do you have a computer?
- Q: And you have no computer track, no computer software that is used to
- inventory or identify what is in it, like a docket in a court?
- A: We have a project tracking system that assigns a project number to every
- assignment. Whether it's AR1-1, or a special order, or a memorandum.
- They're assigned a number and there are certain basic things, and from

- certain basic information about each project that's maintained, who it's
 - assigned to, who it came from, what type of change it is, you know, the
- date it's submitted for signature, the date it's signed, the index coding or
- the number that's assigned to identify that regulation. So those kinds of basic things are kept electronically and just recently the project tracking
- summaries, those sheets that used to be filled out by hand became part of
- the project tracking system so that rather now, rather than having a sheet
- of paper you're supposed to fill out, you're supposed to enter those onto
- the electronic version of the sheet. And then the historical file would
- contain a printed copy of that sheet which is the summary when the
- historical file is submitted.
- Q:Put a note down there to request a project docketing form. Now, does the
- person who reviews the file, are they supposed to be identified on the
- project docketing form?

- A: Not normally. That's a procedure that occurs while the project is still
- active. For historical purposes if someone comes in and simply looks
- through a file there's probably no record of that. If we receive a request
- for information from a historical file or to research or view several
- historical files in relation to, say, an action against the department that deals with pursuits, we may receive a request that asks for historical 20
- 21 information on everything that deals with pursuits as department policy
- between a span of dates. And those are tracked as a separate project, a
- research project. But to say that someone who comes in to look at an 23
- historical file to say that that information is recorded. We don't do that.

- Q:Ok, now back to promulgation again. Now if somebody is going to review
- that file, take part of it out, or make a suggested change that may be
- 3 reflected but might not be.
- 4 A:It's probably not. And it may be, you know, depending on the situation.
- Let's say a Captain for the Bureau of Patrol comes in and wants to FR 610
- historical file for the most recent change. They may request copies of the
- 7 information that's contained in there because they are going to submit
- s changes. And they need that information. I was going to say then we
- would provide them with copies. Depending on the nature and the extent
- of that interaction there may or may not be a separate research number
- 11 taken.
- 12 Q:Let me ask, I want to switch gears here just a little and ask you how the
- file is organized. Well you have a historic file right? Ok. Now I want to
- review that historic file. Is it a spaghetti, a plate of spaghetti mess or if I
- look at the latest effective date is a copy going to be there? Are the history
- of when other changes were made, are they kept in some kind of time
- 17 order?
- 18 A: Each change, let's say since we're talking about AR 1-1 I'll just use that.
- Every change in AR 1-1 is maintained together but they're filed
- separately numerically. And within each separate file is the historical for
- that particular change. Now when you talk about a plate of spaghetti,
- historical files are supposed to follow a logical sequence so that when I
- open a file I can look and follow it from back to front.
- Q:You're supposed to follow a calendar sequence, right?

- 1 A:Well. A calendar sequence or an event sequence. I can follow the history
- of that project from when it's submitted initially and actually in this case
- or in the case of regulations, there's a copy of the regulation that's
- changed. Like, if it's AR 1-1, the original AR 1-1 that's being replaced is
- the first thing that should in there followed by the proposed changes all
- the way up through the master copy that's signed by the Commissioner.
- 7 Q: Are you familiar with how court records are kept? A complaint, an
- 8 amended complaint?
- 9 A:No.
- 10 Q:Ok, now based on my opportunities, I've had different opportunities at
- different times to see the format, by that I mean the layout of a regulation
- that are kept in your files. On the upper right hand corner, on the face of a
- regulation is the effective date. Is that correct?
- M A.Yes
- 15 Q:Stares right out at you and it's done in a date/time group. If I remember
- correctly, I think it's month/day/ year. It may be day/month/year. Ok,
- 17 how's it go?
- 18 A: It's month/ day/ year.
- 19 Q:My memory is serving me correctly. And I would put the type size; oh the
- letters are at least an eighth of an inch, to me appear to be at least a
- 21 quarter of an inch in height.
- 22 A:It's Arial 12.5.
- 23 O: Arial 12.5.
- 24 A; Arial 12 point font.

- Q: Arial 12-point font. You need to change it to 14 for us older fellows but
- have you ever known any, in your experience, any PSP regulation where
- 3 there has been a change, that has been affected, that didn't have the date,
- which is obviously an extremely important part of the regulation so you
 know what's applicable and what isn't in the upper right hand face corner
- Cate -- -- Italian O
- 6 of the regulation?
- 7 A:No.
- 8 Q:Now, is that date/ time group on every page of the regulation? If you
- y know offhand.
- 10 A:Yes.
- 11 Q:It is, isn't it?
- 12 A:Yeah.
- 13 Q:If you go through that regulation every single page has that affective date
- on the top. Can you tell me why?
- 15 A:Well, there may be different dates in a regulation depending on when
- pages are changed because a regulation may or may not all be changed at
- one time. And let's say you have a date that's dated today that's one page,
- the only page in that regulation that reflects today's date would be that
- page. Everything else would reflect what the current date of that
- 20 regulation is.
- 21 Q: And every single page has that date/time group and do you ever put any
- 22 information on there 'replace this', or that sort of thing that sort of
- information. You know, for example, I get certain legal publications.
- 24 They revise them on a yearly basis for which they get paid pernicious
- amounts of money in excess for what they do and the publishing

- companies get that. So when those changes come through there's a little
- parentheses in there, a little indication that says replaces such and such,
 and so and so. Do you have anything like that on your system?
- 4 A:I understand what you're talking about and we see them in changes to
- s like, the Rules of Current Procedure, those kinds of things. What we use is
- a little different. It's not nearly as complex as that indicates on each
- 7 particular page several amounts of information. What we use is on a
- Change Sheet. And the Change Sheet is the document that's signed by the
 Commissioner that distributes and disseminates and actually authorizes
- Commissioner that distributes and disseminates and actuarry authorized
- the change and it has an instructions portion that tell you, you know.

 There are several things that it may or may not do. If there is a special
- order, which is a temporary directive that needs to be rescinded as a result
- of this change. It will tell you which changes to remove and which pages
- to replace. So it will have those kinds of instructions. If there is something
- that needs to be annotated in another regulation it would indicate that. So
- desired of the following the first t
- there's, all the information is contained on what we call a Change Sheet,
- which also has a date. And that's where the index code is reflected.

 Q:Do you prepare the Change Sheet or does somebody else?
- 19 A: We prepare that. It may come in as part of the proposed change but that is
- what we do, is prepare the Change Sheets.
- Q: As to AR 1-1, as you sit here today do you have a recollection as to when
- it was last changed or altered? I'm referring more particularly to 1-1.02
- 23 subsection C.
- 24 A:Well, I'm going to presume the Chain of Command section since I don't
- is know that.

- Q:Well you presume correctly.
- A:that I probably dated particular change through my project person who
- was working on it with the most recent change, which I believe, was
- March of 2001. So that's, I mean that's where that change came from and
- that's how it was promulgated. It was added in response to inquiries I
- received while we were working on the project.
- Q:Well, I have a little bit of knowledge about that change and my best
- recollection is Fall of 2000, September, October, that area in there, there
- was some discussions about it. about changes, in that Chain of Command
- 16 thing you're talking about but then my understanding is that's been talked
- 11 about for years. I mean it raises very, I mean it's beyond the scope of this
- deposition, raises some extremely serious questions about responsibilities 12
- 13 to report and act on behalf of troopers who are in the Chain of Command.
- 14 What their duties and responsibilities are particularly to conflicts between
- 15
- law, regulation, moral feelings and the duties or responsibilities to report
- 16 to superiors. So it's to my knowledge it has quite a history of being
- discussed and looking for wording and trying to strike a balance in there 17
- somewhere. Now, let me ask you, since you promulgated the change, do 18
- you remember prior to when the inquiries you received, and I'm going to 10
- ask you about that in just a minute, when the last activity had been before 20
- 21 you received the last set of inquiries that resulted in the change itself.
- 22 Give a little history there.
- A:Ok, The AR1-1 as it currently exists is a project that started in July of 23
- 24 1997 with a change of some duties in one of the Bureau Patrols Divisions.
- 25 The department between 1997 and when this actually went out underwent

- numerous organizational changes, changes in geographical construction of
- troops and areas. So there's a significant amount of information in the
- AR1-1 that was revised. What we had done is, you know. We prepared a
- change, and it seemed like every time we would get a change prepared
- and ready to submit for signature there would be another change. Another
- reorganization.
- Q: Are you referring to organizational changes or are you referring to
- subsection C?
- A:No, I'm referring to organizational changes.
- Q:I thought so. Go ahead.
- A:So those were all completed and finally submitted. We had five different
- project people work on that project because it took so long people were
- transferring before we could get it completed. So it was submitted for 13
- signature and it got as far as Colonel Hickes and was returned to us 14
- indicating that it was not going to proceed until a resolution on a pilot
- program in several of the troops as it related to troop headquarters
 - organizational structure.
- Q:Which really does not pertain to subsection C.
- A:Right. So as we were holding that we started to move closer and closer to
- the department's accreditation, re-accreditation of the department by
- KOLEA and we needed the revised AR1-1 in place prior to the 21
- 22 department's reassessment.
- Q: Are you testifying trooper that you needed subsection C for accreditation? 23
- You're not saying that, are you?
- A:No.

- Q:Because that is not correct is it?
- A:No, the AR1-1 we needed. The organizational structure of the department
- we had to have in place correctly.
- Q:To meet that national accrediting standard but not subsection C.
- A:No.
- All right sir. Continue.
- A:During the period of time when it was returned to us by Colonel Hickes
- and it was resubmitted for signature with subsection C added I received a
- call from Captain Reilly.
- Q:Can you stop there for a moment? Resubmitted with signature? 10
- 11 A:For signature.
- Q:Ok, what does that mean?
- A: Well that's how they're promulgated. We prepare it and submit it for 13
- signature. Submit it through the approval process for the signature of the 14
- Commissioner or whatever appropriate authority is indicated. 15
- 16 Q: What is the authority?
- A: Well, on that particular regulation it's the Commissioner. 17
- Q:So when you say 'For Signature' when we're reading this deposition in
- the future. 'For Signature' means the Commissioner's approval.
- A:Correct in this particular case. 20
- Q:With this particular regulation and particularly when you're talking about 21
- something like a subsection C. I would think because it's Chain of 22
- Command and he's the top of the heap. 23
- 24
- Q:Oh, he's not the top of the heap?

- A: Ah, yeah, he's the top of the hean.
- O:Go ahead.
- A:Ok, so I received a telephone call from Captain Reilly and the time period
- is, you know, before, it was after it had been returned but before it was
- resubmitted. And his inquiry was a research request for any department-
- regulations that we had that dealt with or specifically indicated that
- members are supposed to adhere to the Chain of Command. And he
- indicated that his request came from Major Washington in the Bureau of Special Operations and that he was inquiring because of a situation there
- Q:What situation there?
- A:I don't know
- Q:Mr. Washington did you say?
- A:Major Leonard Washington,
- Q:When?
- A:I don't know
- Q:Would it be written down anywhere, when?
- Q:Reilly transmitted this information to you? 19
- 20 A: Yes. He, off the top of my head I don't know.
- Q: All right, Thank you sir. Could you continue please?
- A:So Captain Reilly called me. Asked me if I knew of anything. I couldn't 22
- think of anything. I told him Pd research it and get back to him. And I 23
- looked and couldn't find anything specifically dealing with Chain of
- Command anywhere in the department's regulations. So I relayed that

- information to Captain Reilly and we discussed promulgating what was
- 2 perceived or addressing what was perceived to be a policy void. Which is
- 3 part of what we do and that we had, you know, the obvious place for that
- to be was ARI-1, and that we had a change pending for that. We could
- s incorporate that change into our existing work that we were doing.
- 6 Q:If I might just ask a couple of questions here. You said a "void in policy".
- 7 A:Right.
- 8 Q:How many years have we had of Pennsylvania State Police?
- A:Since 1905.
- 10 Q:This is a Chain of Custody issue?
- 11 A:No.
- 12 Q:I'm sorry. This is a Chain of Command issue? Responsibility within the
- 13 Chain of Command?
- 14 A:Yes
- 15 Q:It is fair to say there has been a policy void since, what year did you say?
- 16 190 what?
- 17 A:Five.
- 18 Q:1905. Now you researched this because you're the guy that does that. So
- what you're telling us is that there was a perceived, this is between you
- and Mr. Washington, a discussion.
- 21 A:No.
- 22 Q:Or you and Mr. Reilly. A perceived policy void since 1905. Right?
- 3 A:Right
- 24 Q:Ok and this discussion would have taken place after, at least sometime
- after October of year 2000. I am correct about that aren't !?

- A:Probably, I don't know.
- 2 Q:Probably. Could you go back and check that for us and see if you can find
- out when that conversation may have taken place? With Mr. Reilly?
- 4 A:I know it was between the time that it was sent back to us by Colonel
- Hickes which was, the ARI-I was submitted in the fall of 1999 and was
- resubmitted then sometime in 2000 and it was eventually signed.
- 7 Q:So then it might have been prior to October of 2000, Might have been.
- 8 A:Yes. Could have been.
- 9 Q: We just don't know. But we do know there was a discussion, not putting
- you down, but we do know there was a discussion between you and Mr.
- Reilly and, at least as to the two of you, somebody, somebody suggested,
- 12 I will assume, unless you correct me as to what went on in that
- conversation, that it came from Mr. Reilly, that there was a policy void
- 14 here that needed to be filled.
- 15 A: Well, I'm not going to attribute that to Captain Reilly. It could very well
- have been that there was nothing in the regulations and we should
- 17 probably address that.
- 18 Q:So what happened next?
- A: The next thing that happened is when we got ready to resubmit that for
- signature as part of our accreditation, as a department we had to have that
- done, I assured Corporal MacAravey, who was the new project person,
- 22 incorporated language before it went for resubmission for signature.
- 23 Q:Ok. So that we're clear on this. There was a need, an understood need that
- ARI-I needed to be revised or changed to meet accreditation
- 25 requirements that are national type requirements and I think we're all

- aware of the strong Pennsylvania State Police drive to be part of that
- process and be accredited and all that but subsection C. AR1-1.02
- 3 subsection C was not a necessity for that accreditation need. And in fact
- 4 had it not been made a part of the revisions to ARI-1 it would not have
- effected the accreditation process. Am I correct?
- 6 A:Most likely.
- 7 Q:All right, most likely. Why do you say most likely? Did you have any
- s information from the national folks that you need to have a Chain of
- 9 Command thing in there? Now, we're talking police forces all across the
- country with duties on behalf of officers, who they report to and what they
- 11 say.
- 12 A: I can't answer whether or not that specific language is used for a proof
- of compliance within a particular accreditation standard.
- Q: Tell us who sets the compliance standards? And are they audited by this
- 15 group?
- 16 A:The standards are set by the commission COLEA and we have an
- 17 accreditation manager who insures compliance.
- 18 Q:Who is that?
- 19 A:Jerry Jarsicrac.
- 20 Q:Now to go back you'd indicated I think it was Captain Marjevik, did you
- say? Who was the Captain or some officer that actually penned... Jerry...
- 22 A:Pendarsancrat.
- 23 Q:No, no, not him. There's another individual, a Slavik name, you
- 24 mentioned it earlier.
- 25 A:Macaravey.

- 1 Q:Mr.Macaravey is the individual that actually penned the words?
- 2 A:Well I gave him the words and between us what is currently in place is a
- 3 collaborative effort of what I told him to put in the regulation.
- 4 Q:Where did you get the words?
- 5 A:From, they're my words.
- 6 Q:So you made them up.
- 7 A:Yes.
- 8 Q:This came after you had a discussion with Mr. Reilly?
- 9 A:Yes.
- Q:So tell us about your thought processes and thoughts and what input you
- 11 put into those words.
- 12 A: After the conversation with Reilly and let me say, that you know, I have
- 13 conversation with command staff from various bureaus on a regular basis.
- I meet monthly with the Bureau of Professional Responsibility and those
- are the types of issues that are discussed and often between Captain
- 16 Skirkus, you know discussions with him, and his staff there are changes
- or revisions that are promulgated as a result of those discussions. So based
- on my conversations with Captain Reilly the perceived need for to address
- the fact that we're a paramilitary organization that really does not tell
- everybody, or anybody that they needed to, there were several regulations
- that alluded to a Chain of Command, that alluded to those types of things.

 But nothing that definitively said we have a Chain of Command and
- 23 you're required to use it.
- 24 Q:Do you know the language off hand of AR1-1.02?
- 25 A:No I don't.

- Q:Well, what was the purpose that you and Mr. Reilly discussed, is not
- needed, it's not required, at least at the time you had no knowledge that it
- was required as part of the needs to revise AR1-1 for national
- accreditation. What concepts did you two decide or talk about was
- important to put into that subsection? And what were the reasons for that?
- A:I don't know that Captain Reilly and I discussed anything other than
- generically we need to have something in place that indicates that we have
- a Chain of Command and people are required to use it. As far as the
- specificity of the language there was no discussion with Captain Reilly on
- what it should say. It isn't a situation where proposed language was
- discussed. You know just generically this is what we need to accomplish
- 12
- What were you trying to accomplish? Let me ask you, I'm going to 13
- 14 change direction a little bit. Are you having discipline problems in the
- 15 Pennsylvania State Police?
- A: Am I having problems? I can't answer that question.
- Q: Do you know whether the Pennsylvania State police are having discipline 17
- problems? Do you know whether Troopers in the Pennsylvania State 18
- Police are having difficulties knowing who is in charge and who their 19
- immediate supervisors are?
- 31 I can't answer that.
- Do you have any information have you heard any scuttlebutt or 22
- rumors about Pennsylvania State Police Troopers not following orders or 23
- not listening to their superior officers? Rebellion in the ranks? Mutiny? 24

- Anything like that? I'm not trying to be facetious. I'm serious and I'm
- looking for the reason for this thing.
- A: No, other than the incident Major Washington was trying to address.
- Q: And what was that?
- I don't know.
- O:You don't?
- A:only that it was a Chain of Command issue and there was nothing there
- that definitively spelled that our.
- ok so Major Washington didn't tell you?
- A:No.
- Q:Oh, I'm sorry. Now you see why it's good to do these depositions this 11
- way. I'm not being condescending, I made an assumption. Let me explore
 - my error. Major Washington did not identify what he had in mind when
- he talked to you about this Chain of Command thing.
- A:No, I never talked with Major Reilly about Chain of Command.
- Q:Major Washington talked with Mr. Reilly.
- Q:So it's not Major Washington, it's Mr. Reilly never told you what the 18
- A:just basically. I mean not specifics as to...
- Q:Tell me what he said.
- A:Who was involved and what was involved.
- Q:Tell me what he said.
- A: That major Washington was trying to deal with an issue and that he was
- looking for language that spelled out Chain of Command.

- Q:Sarge can I just, to pin you down. I get into these things and I apologize
- but I come on strong. Let me back down lower here my intensity gauge. I
- apologize to you. If I understand, when Mr. Reilly spoke with you, he
- made reference to Mr. Washington having an interest in this Chain of
- Command issue. Bu he never identified what it was about or why. Just
- that there was an interest in something. So t was generic. It was general. A:Yes. And he also indicated that he had researched the training. They teach
- Chain of Command to the Academy but they didn't have a regulation that
- they base what they teach on.
- In other words there was nothing in the regulation that said Chain of
- Command. So they teach it but there wasn't anything to back that up.
- Q:How do you leach that? Aren't Pennsylvania State Troopers taught that
- 13 they are to obey lawful orders?
- A: Yes. 14
- Q: From the Geneva Convention through our army, to our paramilitary ł5
- groups in the United States there's an obvious conflict between an 16
- individual's moral feelings of what a lawful order is. Let me give you an 17
- example. A US army platoon leader can't order one of his soldiers to
- execute someone. That's pretty much common sense in our system, right?
- A:I would hope that's the case.
- Q: Ok, you get an A+. That's a right answer. Just a second. I have to change 21
- a tape here soon so I may interrupt you at some point. If I do that's ok? 22
- A:Sure

- Q:ok. But your troopers are taught and every Pennsylvania State Trooper
- knows and understands that they're going to suffer a consequence of
- insubordination if they don't follow a lawful order.
- Q:And there's no way that you can structure regulations that would cover
- every hypothetical situation, every possible situation that could arise in a
- career lifetime that a superior officer, that a superior officer may provide
- and or order, right?
- A:That's correct.
- Q:I mean you can't do that.
- A:So something that's taught in terms of custom or practice or common
- sense, our country's entire legal, and social relationship between a
- subordinate and a superior. Everybody knows if you get a lawful order, go
- here, do that, do your job, get this done, follow the regulation, it's a
- lawful order and if you don't do it you're going to suffer insubordination. 16
- A:That's correct, however you're confusing a lawful order with Chain of
- Command. There's nothing that says if you are my supervisor that I have to go to you before I go to your supervisor. So that was the perceived
- policy void.
- Q:Ok. How do you know that?

- Q: What was the perceived policy void? Tell us about that again. What was
- the perceived policy void?
- A: The policy void was that there is that nothing that spelled out the Chain of
- Command. The fact that it exists and people were required to follow it.

- Q:But if I don't have a good reason for circumventing my Chain of
- Command, I've got an insubordination problem anyway don't I?
- A: Not before this regulation. No.
- Q: Oh but I got to wait till I talk to my superior now, my immediate
- superior. And if I go to anybody else that's above me in me Chain of
- Command, I run the risk of punishment, I'm going to ask you about what
- the punishment if I circumvent that now.
- A: Well there are instances by regulation when you may circumvent the
- Chain of Command. Sexual harassment issues, EEO issues, I men there 9
 - are regulatory exceptions to the Chain of Command requirements.
- END OF SIDE ONE TAPE ONE
- MR. BAILEY: Ok. And what are some other exceptions I mean. 14
- A: Off the top of my head I can't think of them, that's what pops in to my 15 head. Obviously if your superior officer sexually harasses you you're not 16
- 17 required to have to go to that supervisor to make the complaint. You can
- 18

11

12

13

- Q:If you read the opinion of some federal judges you might have to but 19
- that's ok. Go ahead. 20
- 21
- 22 O: Well is time a factor?
- 23 A: I'm not sure I understand.
- Q:Well I mean if an officer is in a situation where they don't have access, I
- assume in dealing with your, in doing this thing here, putting this chain of

- command thing in here that there was some consideration given for time
- and circumstance. I mean what are the allowances. Sexual harassment's
- an obvious one. What about time, availability, that kind of thing?
- Well anytime you would have a situation where, let's say that I'm the
- supervisor and I'm on vacation for two weeks. Obviously there's either going to be a situation where somebody is taking my place or filling in for
- me or someone is going to go to my supervisor just because that gap is
- there. So it isn't intended to stifle the system to the point where if you're
- immediate supervisor isn't there that nothing can proceed.
- Q:Before we go further with any questions what was the effective date on
- this subsection C by the way, just for the record?
- A: Well it was I guess March, when the rest of the 1-1 came out. It was all
 - effective at the same time.
- Q: And when did the Commissioner approve it? I am going to ask you about
- your affidavit by the way.
- A:Ok. Off the top of my head I don't recall. I'm going to say it's some time
 - in March of 2000.
- 18 Q: Is it possible it was the third week in February, the third or fourth
- 19 week.
- A:That's possible.
- Q:Maybe like February 22?
- A:I don't know. Off the top of my head I don't know. I know that from the
- time, I just know what the regulation is dated and it's dated some time in 23
- March I believe.

- Q:Sir, sergeant can you tell me when you had this conversation with Mr.
- Riley did anything come to your mind about the need for this was or why
- this was necessary?
- A:No, what struck me was that the fact that there was nothing there. I guess
- I just always assumed that there was something there. I didn't realize that
- specifically said that.
- Q: See that's why I asked you the questions about history since 1905. The.
- Pennsylvania State Police one of the finest Police organizations in the
- entire country. I don't think anybody questions that. It's out there, it's
- doing a great job, enjoys a great public reputation and it dawns on you at
- the end of the century basically, the very end. I mean 95 years later, hey, 11
- that's not there. Now a lot of politicians, one law of office is talking about 12
- bureaucrats making decisions and doing things when there's not a need. 13
- And that's what I want to ask you about. I understand that there wasn't
- 15 any thing there. My question goes a step further. What's the need? I mean
- do you trust. I'm not talking about you. Does the Pennsylvania State 16
- police trust it's membership to understand and know that it should follow 17
- reasonable protocols, reasonable responsibility, stay within it's Chain of 18
- Command? I mean there has to be a political sanction or reaction if you 19
- 20
- abuse your Chain of Command to the point where you're disloyal. Was 21 that what you were thinking of? Disloyalty?
- 22 No, actually the mark of, and you talk about the Pennsylvania State
- 23 Police being a great organization. One of the things that make us great is the ability to grow and to recognize our weaknesses and correct those. 24
- And that's what this does and I think it's important to understand that 25

- And matter of fact that little date/time group that you and I talked about does in fact indicate March doesn't it?
- A: As far as I remember yeah,
- Q:But when the Commissioner signs it. I mean there's some significance
- about when the Commissioner says this is the regulation. And he's the
- ultimate authority when he's says it's the regulation. And you have no
- there are no facts known to you which would indicate that the
- Commissioner say before the fourth week, the third or fourth week in
- February approved that change, correct?
- 10 A:No.
- So, what was in effect before subsection C achieved its ignoble birth 11 12 was 1997, Right?
- 13 A:Right.
- Q:Now let's look at this Chain of Command thing. You had indicated that 15
- the effect of subsection C is that you need to have some kind of reason if
- 16 you go outside of your chain of command.
- 17 A:Yes.
- Q:Ok. Now when Mr. Riley talked to you, when you and Mr. Riley talked
- whatever what was said and I do realize you don't remember exactly what
- 20 was said but you do know that he indicated to you that there was an
- 21 interest expressed by Major Washington generally, not specifically as to
- why there needed to be something of this sort. Right? 22
- A:Right.

- within the structure of the Pennsylvania State Police we're not all enlisted. So we don't all have that same military rank structure. We have a lot of civilians who don't necessarily agree or believe in or follow the Chain of Command. And until this regulation was put in place there was nothing that said outside of me knowing that someone who works for me is going around me because I'm not going to give them the answer that they want in any particular situation. So they used the fact that there's not really a regulation that specifically says I have to go to my supervisor to ask about this particular issue so I'm going to go to his supervisor because I get then 10 what I want. Well now that's not something that they can do. And outside of me recognizing that and giving a lawful order to get back to what you 11 12 were saying earlier and saying you are not to do that if you have 13 something you need to discuss, you need to discuss it with me first. Well 14 then if they do it they've disobeyed a lawful order but they, outside of that 15 there's no, prior to this, there was no concrete requirement. And you can 16 talk about political ramifications, you can talk about anything else but the 17 reality is if somebody does it and you want to discipline them for it and they take it to arbitration the chances are the arbitrator is going to say, 18 19 well what regulation did they violate? They violated the concept that you're not supposed to do that. Well that's not a very concrete block for 20 21 and arbitrator to make a determination on. Q: Now what are the sanctions if you violate this new subsection "C"?
- individual and the infraction and so on. I keep thinking about all these little due processes, protection of the law things. It scares me to death. But I'm just sort of curious if somebody violates the Chain of Command who is the initiating officer on punishment. Is it the immediate supervisor? Could it be the Commissioner? Does it have to be in that person's Chain of Command? For example in the United States Army if some company grade person violates a rule a battalion commander cannot drop out of the sky any more and say punish that person. There's a system of justice and I'm wondering if you know anything about how this thing is enforced, how it's followed? 11 12 A: Well the enforcement would be for any other department regulation that's 13 violated. And let's say I'm the one who violates it and I go directly to Colonel Hickes with an issue and by pass my Lieutenant and my Major. 14 Well Colonel Hickes may be the one to initiate that change, or Major 15 16 Merryman or Lt. Thurston may be the one to initiate some action. And it 17 may be in form of a supervisor's notation that says that you know we have a regulation. You really need to follow it. They may initiate a worksheet 18 on me and put me into the BPR process. Do an investigation, adjudicate it 19 and you get a written reprimand, oral reprimand. 26 21 Q:Well what kind of things do you have to take to your supervisor? So you have to tell them that you're going to the bathroom. Can you seek 22

permission from somebody else to go to the bathroom? To use the

restroom in the next building. A report about what happened on the job yesterday. I mean what things does subsection "C" let me know are going

disciplinary officer and it's a case-by-case basis and it's based on the

to carry a punishment if I don't tell my supervisor first. And if I tell my

A:I, that's within the disciplinary structure of the department. I don't have

anything to do with that. It depends. Discipline is administered by the

- supervisor first, am I allowed to tell anybody else? Does it address those 2
- issues? Remember?

24

- A:I don't know the specific language.
- Q:I'm not trying to be silly.
- A:I understand what you're saying.
- Q:You know you're putting a person in a position, where at incredible risk it
- seems to me and I'm just wondering what the parameters are, I'm
- wondering if you're the person, I'm trying to find out this policy need and
- 10 what it was to address. You told us that there wasn't anything there. For
- 11 all these years, a hundred years there wasn't anything there. And we know
- that this thing has been talked about for years and years, and years some 12
- type of language. You didn't know that? 13
- A:No, my first conversation about Chain of Command, and the fact that
- there wasn't anything, like my first realization that there wasn't anything 15
- concrete was after my first conversation with Captain Riley. And if there 16
- were discussions concerning those types issues previous to that I wasn't 17

- Q:Do you know if the US Army has a Chain of Command?
- I spent six years in the US Army.
- Q:What was your MOS?
- A:I was a 71 Lima.
- Q:Let me ask you do you have a recollection that's not MI is it?
- A:I was in the military intelligence battalion in the 82nd Airborne Division.

- ι . Q:Well if you had been in the $2^{nd}\,325$ you'd have been in the best regimental
- history in the whole division. Now let me ask you, do you know if there is
- any Chain of Command provision in the US Army that you remember?
- A:Yeah.

23

- Q:Ok. What's it say?
- A:Oh I don't...
- Q:I wondered if you borrowed from it that's why I was asking.
- As far as reviewing military doctrine or military regulations to use as
- a basis to basically plagiarize this language, no.
- Q:I wouldn't suggest that.
- A:Maybe subconsciously.
- Q:I don't think that's plagiarism. I just was wondering where you got your
- language. You know if you came up with it on your own, if you used
- 14 some kind of model or where you might have gotten it that's all.
- A: Well probably based on the model of a paramilitary organization versus a 15
- military organization and having a military background and a basic
- concept of what Chain of Command is.
- Q: Well, I tell you I have read your language and since you wrote it I'm
- going to go to the horses mouth and I'm going to ask you. Is there
- anything in subsection "C" that says you can't tell somebody outside of
- your Chain of Command something?
- A:To be honest with you I don't even remember what subsection C says. I
- don't think I've even looked at it since it's there.

- Q:Was it your purpose in subsection C as the person that created the
- 2 language but your purpose, was it to control who somebody went and
- talked to or reported to or what orders that they followed?
- 4 A: Well the orders part again is a separate issue.
- s Q:Yeah, what was your intent of the language?
- 6 A: The intent of the language was to insure that without cause or without
- 7 regulatory exception that people did not circumvent the Chain of
- 8 Command.
- Q:Yeah but what does that mean, Sergeant? What does circumvent the
- 10 Chain of Command mean? Can you give us some examples of what
- circumvention means? How do you, what's that mean? I'm a trooper out
- there and I read this thing. What's it supposed to mean to me? I assume
- we're going to teach it at the Academy and tell people what it means.
- Have you put together a training guide on that thing yet?
- 15 A:That's not my job.
- 16 Q:Has your legal office done that?
- 17 A:I don't know.
- 18 Q:Well, what's it supposed to mean to me? What I'm allowed to do and
- what I'm not allowed to do?
- 20 A: Again you have to fall back on; you have to use some common sense. Use
- 21 the example about going to the bathroom.
- 22 Q:I exaggerated to press the point.
- 23 A: Well, I understand but my point is it's intended o insure that people don't
- 24 violate the concept of Chain of Command to circumvent for their own
- interest, or interests contrary to what... and again it will depend on where

- you're stationed if, you know. If you're idea is, and you're assigned to
- the field, to a patrol unit or you're assigned to work for me and I've told
- you already, or I've said it's going to be limited as to who can be off on a
- 4 certain day or a certain period of time. You don't go ahead of me or above
- me to get approval to be off when I've already said it's going to be
- 6 limited. And then I hear secondhand that Corporal MacAravey is, well,
- 7 I've already approved him to be off.
- 8 Q:Let's take a real simple example, ok? A subordinate of yours, you're their
- 9 immediate supervisor, you tell them "No, you cannot take Friday off. I
- need you here. I'm going to be shorthanded." That person goes to your
 - supervisor and says, "You know Sarge down there says I can't take Friday
- off "and let's say they are friends. They are social friends and that
- superior of yours countermands your order.
- 14 A: Right.
- 15 Q:That would, I assume, this subsection "C" would create a right in you to
- 16 make a complaint?
- 17 A:No.
- 18 Q:Oh, it would not?
- A:No, because they talked with me about that. If someone comes to me and
- they disagree with what I tell them and they pursue it further then they
- 21 haven't really circumvented the Chain of Command. They disagree with
- what the Chain of Command is telling them but they have, they've come
- 23 to me first and not gone around me first.
- и Q: Ok. Second situation. I don't come to you. I want Friday off. I'm
- in the office. We have a general meeting. During the general meeting you

- say, "Look, I'm shorthanded. We have six people here. X, Y, and Z are
- taking off. I can't lose anybody else so please, you know we've got to
 have folks here." So I go above you after heating you express those
- sentiments. Let's say you didn't even put it in order form. It's not an
- order; it's just like a request or something like that. But I go above you
- because I know you're not going to ok it. And so I go to your immediate
- boss and get myself a leave approved. Is that a violation of subsection "C"
- as you remember it?
- A:Potentially.
- 18 Q:Potentially. You have a right to complain about what that subordinate did
- 11 right?
- 12 A: Sure.
- 13 Q:Do you have any of these revisions at all to ARI-I, which place
- responsibility on a superior to reprimand or to direct the subordinate
- because you see that's how the army works, ok?
- 16 A:Um-hmm,
- 17 Q:To go back to their immediate supervisor or immediate superior and either
- get permission or to go through the Chain of Command.
- A: Are you asking me if that language is included in what we wrote?

 O: Sure Well subsection "" or I would not be a subsection to the subs
- 20 Q:Sure. Well, subsection "C" as I recollect places the "Illness" on the
- individual that goes around the Chain of Command up but it doesn't have any repercussions at all for the individuals on the top that breaks the rule.
- 23 A:That may be another void we need to address.
- 24 Q:There are all these voids. I hope we get them all addressed. Might be but
- subsection "C" doesn't address that does it?

- A:I don't recall whether it does or not.
- 2 Q:Ok, we'll have to look real close at that language and see. Who did you
- consult with besides Mr. Riley if anybody about the language?
- 4 A: Just this project person, Corporal MacAravey.
- 5 Q:Mr, MacAravey. What went with you and Mr. MacAravey on the
- 6 change
- 7 A:We discussed the ah, first of all I told him about the conversation with
- 8 Captain Riley and laid out the basic history and what we wanted to
- 9 accomplish. We needed to include something that addressed Chain of
- Command. ARI-1 was the obvious place to do it. I told him to look
- 11 through the 1-1, find a place that he thought it would best fit and this is
- basically what I want it to say ad to craft language that addressed that and
- after a couple of revisions back and forth, the final language was set forth.
- 14 Q: Is Mr. Riley in your Chain of Command?
- 15 A:No, not my immediate Chain of Command. No.
- 16 Q:Mr. Washington in your Chain of Command?
- 17 A:No.
- 18 Q:Did you go to your immediate supervisor about whether or not you should
- make that change?
- 20 A:No.
- 21 Q: Why not?
- 22 A:Because that's the ...
- 23 Q: Doesn't subsection "C" apply to you?
- 24 A: Well subsection "C" at the time didn't exist. And it wasn't...

- Q:You can't go willy-nilly changing. I mean, are there any regulations that
- govern who you consult with when you make a change?
- Q:Is that a void? I'm not being funny now. I'm not trying to be contentions
- with you. Is that a policy void do you think?
- Q:Ok. So they don't have to come from the top down.
- A:Does that seem self-serving?
- Q:Well, no. I don't think it seems self-serving. I'm just wondering. I'm
- looking at the logic of your analysis and of the situation. My 10
- understanding is if these recommendations cone in, at least from what you 11
- 12 testified, they come in to you.
- A:To me. 13
- Q: And one of your jobs is to look for conflicts and consider them, etc. You 14
- discussed things with Mr. MacAravey. Your affidavit says, I perceive this 15
- as a huge thing by the way. Maybe it's just a minor thing to you. I look at 16
- it differently but I'm one of those troublesome lawyers. But you did not 17
- 18 go to Joanna Reynolds. You did not go to anybody in the legal office to
- look about or to ask about the impact or nature of these things on even 19
- such things as basic due process or the First Amendment any of those 20
- kinds of things. Which, I'm not saying you should even think about that 21
- 22 and I'm not suggesting you did. In looking at the process it seems that for
- such a momentous change, a hundred years. A hundred years. We've got 23
- this subsection "C". You talk to Mr. MacAravey about it and then the 24
- language goes up. Now in fairness to you that would be the normal 25

- procedure. In other words these things cone in and you would pen
- changes.
- A:Right.
- Q: You wouldn't veto a proposed change. If somebody brought something in
- and you didn't agree with it, do you have the power to control whether it's
- reviewed by your superiors?
- A:Depends on what it is.
- Q: All right sir. If I'm a trooper and I work up a change to a regulation as a
- recommendation what I would normally do. Do I have to go through my
- Chain of Command to get it to you or am I allowed o report it to you?
- A: That depends. You can use a Regulation Revision Request and send that
- directly to me.
- Q:You mentioned that. You did mention that,
- A: A suggestion goes through the Chain of Command. If you're in another
- Bureau and you have a change that you want to propose that would go 15
- through your Chain of Command and eventually end up where we're at.
- But let's, to take your example, you may propose language that I know
- has already been addressed and disapproved. So yeah if you resubmit that
- the day after I know for example, and I'll make this up. Let's say that 19
- someone suggested that we start to wear blue socks and that went to the
- 21 Commissioner. And the Commissioner says, "Well we're not wearing
- blue socks. We'll stick with the black socks." And the next day I get 22
- 23 another suggestion that says, "I think we should wear blue socks." Well
- 24 you talk about veto. Well we already know that the Commissioner doesn't
- 25 want us to wear blue socks so those are the kinds of things.

- Q:So now I go above you and I go to Mr. Corey and I lobby for blue socks.
- A: Well, I'm not in your Chain of Command though probably so.
- Q:Ok. What if I work for you?
- A: Well, if you've addressed it with me, then again, I think there's a
- fundamental difference between addressing an issue with a supervisor,
- disagreeing with the resolution and the pursuing that further.
- Q:Is there a certain amount of time to talk to the supervisor?
- A:I don't know that that's specified. Again a lot of that depends on the
 - circumstances and the employment of some commons sense.
- Q:I don't get accused that often of using it. 10
- A:To varying degrees our membership uses common sense but again to get
 - back to the sexual harassment complaint, there's a regulation that
- specifically authorizes you to go to circumvent and go directly to people. 13
- Q:We're not talking about sexual harassment. We're talking about a
- situation where subsection "C" applies. You told us subsection "C" does 15
- not apply to sexual harassment. We're talking about a situation where I 16
- have to make a judgment. I have to make a judgment. I don't have any
- choice. I've got a concern. I've got to exercise a judgment. That's why I 18
- asked you all the questions that have to do with simply reporting. It has 19
- nothing to do with orders. What do I go through my Chain of Command 26
- for? Just to tell them something? Just to share information? Or does it 21
- have to have something. What if it's just informing them of something?
- Do I have a duty or obligation to?
- A: Well the language is the same.
- Q:Case by case?

- A:Right it's case by case but I mean, you know, you talk about from 1905 to
- the present we have this in place. What's the need to put it in writing?
- And my point would be if it's already in place in practice and concept,
- what's the harm in putting it in writing?
- Q:I can see it. You and I would disagree on the mischief this can do and the
- danger of it and it's fundamental weakness. Fact is, the question is what
- is in place? What is in place is custom, practice, and standard and
- confidence and people to make decisions. I want to ask you just a couple
- of questions about your affidavit ok?
- Q:Subparagraph 6 says subsequent to those discussions and we're talking 11
- about Captain Riley, Captain Larry Riley. "I composed the language of 12
- AR1-1.02C to respond to the request." Now this is a request that you, in 13
- 14
- your affidavit says come from Major Washington and Mr. Riley. "The office of Chief Counsel was not consulted regarding this language nor 15
- were they requested to review or approve its language prior to its 16
- issuance." Can I simply ask you why not? Why not? Earlier in this
- deposition you said it apparently was not uncommon to run it by legal
- 19 counsel. And apparently this one seems to me is a rather major issue.
- Policy void for almost a hundred years and I don't know if you even 20 21 thought about how long that was?
- 22
- Q:No you didn't. Well, why didn't you run it by counsel, Chief Counsel?
- A: There are several reasons. First of all the regulation in its entirety had
- already been through Chief Counsel, minus that language.

- 1 O: When?
- 2 A:I don't know. Even if it was just staff in their section there were parts of
- that that they had reviewed. Now whether they saw the whole thing in
- 4 total I don't know.
- 9 Q:You don't know when it had been up there though?
- 6 A:No. I know it was '99. In June of 1999 a staffing request went out to all
- 7 the organizational segments. As far as the language goes like I say this
- was something that had to be done in time for the department's
- accreditation process for timeliness reasons for looking at it for, this was
- nothing more than putting on paper the departments practice anyway. It
- wasn't something we just made up. You know for a hundred years the
- department hasn't had a Chain of Command and now we're making one
- 13 up.
- Q:But that's not what you said a matter of twenty or thirty minutes ago. You
- said it was a policy void. It wasn't there. It wasn't on paper.
- 16 A:Right. It wasn't on paper. That's what I mean by policy void. It wasn't on
- 17 paper.
- 18 Q: And it needed to be on paper so you could punish people for it because of
- 19 arbitrators and stuff like that?
- 20 A:Well I'm just saying that's part of the thought process that goes into
- 21 addressing anything in the form of a written policy.
- Q:So that you can discipline people for it?
- 23 A: Well not necessarily. It's to insure the efficient operation of the
- 24 department.

- 1 Q: Well that's certainly one way. Now paragraph seven you say, "AR1-
- 1.02," and I'll emphasize for you sir, "C" is in this paragraph, "Was
- 3 processed in conjunction with all AR1-1 revisions and inconformity with
- 4 R&D and departmental procedures in order to prepare the department for
- its Tri-annual Commission on accreditation of Law Enforcement
- 6 Agencies plea which occurred." Now when I saw that I interpreted that to
- 7 mean we needed subsection "C" or we would have accreditation problem
- but you've cleared that up for us and you're emphasizing again, I'm
- 9 watching your head, that that was not necessary was it?
- 10 A:No, that particular section was not a requirement that I know of for
- 11 accreditation.
- 12 Q: And the accreditation process, the compliance audit or whatever they call
- it was scheduled from April 7 to April 12, 2001, Right?
- 14 A.Yes
- 15 Q:And then this sentence appears, "The Change Sheet which accompanied
- distribution of the official revision of the regulation was auto-penned by
 - the Commissioner rather than signed by him personally." Why is that in
- your affidavit and what is that supposed to mean?
- A:Well the change that, that, the change to the ARI-1 was reviewed by the
- deputies and through our Chain of Command.
- 21 Q:What deputies?
- 22 A:Deputy staff.
- 23 Q:Who?
- 24 A:Colonel Hickes.
- 25 Q:Who else?

- A:Pd have to look at the Change Sheet to be sure but basically what the
- antopen line means is the Commissioner didn't personally sign. That it
- 3 was auto-penned.
- 4 Q:Why do you remember Colonel Hickes? Is he your immediate supervisor?
- s A:Yes. Well he's the one we have to get it approved by.
- 6 Q:I understand, that explains that. Go ahead.
- 7 A:So that's what that line means. The Commissioner didn't personally sign
- 8 it.
- 9 Q:How do you know?
- 10 A:Because Corporal MacAravey hand-carried it up. It was auto-penned in
- 11 his presence and he brought it back.
- 12 Q:Well who told him to hand-carry it up?
- 13 A:I did.
- 14 Q:Why?
- 15 A: Well again timeliness was an issue. We needed it.
- 16 MR. BAILEY: You told us you didn't need it for the accreditation. You just
- 17 told us that.
- 18 A: We didn't need that section but that section was part of what we did.
- Aside from subsection "C" we needed AR1-1 in place.
- 20 Q:Right. So when this thing was taken up to be signed by Mr. MacAravey
- subsection "C" was a footnote to a larger number of changes.
- 22 A: Absolutely.
- 23 Q:Changes that needed to be made, but you seem to be indicating that the
- 24 Commissioner didn't even review them.
- 25 A:Probably not. Not that particular day.

- Q: Are you familiar with a little Latin term that pops up now and then in
- court cases? "Void ab initio", I mean you're a pretty bright guy. That's
- 3 obvious if one talks to you for about one minute. "Void ab initio"
- obviously means bad from the beginning. "Void ab initio" bad from the
- initiation. "Void" from the initiation, How can you have a regulation that
- 6 the Commissioner does not approve? Can you tell me how?
- 7 A: The Commissioner, well, uh, depending on the mature of he change. Let's
- say it's a procedural change with the lab that the Commissioner, its on a
- 9 Change Sheet but its Colonel Hickes, organizationally Colonel Hickes is
- the one that actually initiated that change though his Command Staff.
- 11 Q:It seems to me that what you're saying given the press of business, a very
- large organization, a lot of work to do that as a matter of practice and
- custom, it's a common sense thing, the Commissioner cannot sit down
- and study every minor change to your regulations. Is that a reasonable
- 15 input?
- 16 A: Well, I don't know because I know Colonel Walt did.
- 17 Q:Colonel who did?
- 18 A:Colonel Walt. The prior Commissioner, but there are times when they'll
- authorize, the deputy will authorize if its within their functional area,
- they'll authorize an auto-pen signature for approval of a regulation.
- 21 Q:How do you know?
- 22 A: Well because that's what I do.
- 23 Q:Well how do you know? We're talking about a group of revisions to a
- 24 basic, maybe the most basic organizational regulation in the entire
- department and you're telling me that the authority to put the

- Commissioner's signature on this came from Mary what's-her-name?
- Bongo? How do you spell it?
- A:B-u-n-g-o.
- Q:Mary Bungo is the one who approved this regulation. That's what you're
- telling me.
- A: Well that's not. What I said is she's the one that put the autopen signature
- Q:She's the one that put his signature on it.
- A: Well she does it with his approval. She doesn't just autopen everything
- 10 that comes un.
- 11 Q:Did you ask her if he had reviewed it?
- A:I didn't talk to her, I just know that he carried it up. She sent it back for 12
- some revisions, some questions. 13
- 14
- A: Yeah, that had reached her office. Now the Commissioner may have 15
- reviewed it. Maybe he didn't but I do know that when it came back for the 16
- revisions or the questions that she had indicated that Corporal MacAravey 17
- hand-carried it u addressed those issues. He made a couple of minor 18
- changes, hand-carried it back up. 19
- 20 O:Who is he?
- A:Corporal MacAravey, and she auto-penned it. 21
- Q:So in fairness to you the short answer is you don't know whether the 22
- Commissioner reviewed the revisions to the 1997 version of ARI-1 he 23
- 24 may have and he may not have, and you don't know whether he

- authorized Mary Bungo to affix his signature, or whether he reviewed or
- even saw subsection "C" as you sit here today.
- A:That's correct.
- Q:Ok. Let's go below the Commissioner. And you know that Joann
- Reynolds did not review them. Well you don't know that she didn't
- review them but you know subsection "C" at least was not presented to
- the legal department for a review. Now, and that its not unusual for
- changes to be made to be effective via the procedures you have discussed here generally and generously too I might add. Let's go below the
- 18
- Commissioner, the next person behind is that Mr. Corey?
- 11
- Q:Do you now whether Mr. Corey reviewed AR1-1 or any of its
- revisionsafterthel 997 version had been effected?
- A:Personally that he read it? No.
- Q:Do you know whether he even saw it?
- A:Off the top of my head I don't know. I don't recall if his signature or his
- initials are on the route slip indicating that it came through him.
- Q:Now if you're, if any change is going to be made in a regulation do you
- submit t to Colonel Hickes for a review. What's your Chain of 19
- Command? Who do you answer to? Directly to the Commissioner?
- A:I have division director, a bureau director, it goes through them to the 21
- front office. Depending on the nature of the change determines who 22
- reviews it, which staff. 23
- Q:Oh ok, Bu this one was Colonel Hickes. After Colonel Hickes and he did
- review it and apparently approved it and all that sort of thing, or as least it

- was ok with him. Signed off on it for want of a better descriptive term
- guess. Do you then take it? Where does it go next? Directly to the
- Commissioner?
- A:They have in the front office; they do a number of different things. It's not
- uncommon for Colonel Coury for example to send a proposed regulation
- to the Bureau that may even have initiated it to VCI or Drug Law and tell
- them that he wants them to review it and comment back to him on it. It's
- not uncommon for the front office to send things to the office of Chief
- Counsel for review when we've already done it. So they use an internal
- 10 process that is unique to each individual circumstance.
- Q:Somebody along the line may look at this and decide maybe they want an 11
- opinion from legal or maybe to check on something else. It's more or less 12
- an open process, and, not to be finny but they wouldn't be violating 13
- subsection "C" if they took it sideways somewhere would they? No. I'm
- not trying to be facetious. Pm trying to look at how this thing works. I 15
- mean if Hickes takes this thing and sends it over to legal he's not violating 16
- subsection "C" is he? 17
- 18 A:No.
- Q:Ok, well taking it to legal is not fair because that's not really a Chain of 19
- Command that's fike a support services. Anybody would be normally 20
- expected to have aright to do that, review that. Right?
- A: Well I would hope so.
- Q:Do you know when subsection "C" got there? We know it wasn't there
- for pre-approval. We know that right?
- A:Right.

- Q:We know that, in fact I think the date is sometime around February 21,
- 22, 23, 16, 17 somewhere in that area. I'm pretty sure. I believe at that
- point Mary Bungo does get the signature fixed by autopen. No reason not
- to believe that. Now you indicated distribution, that you handled
- distribution, your office handled distribution. So you have the duty and
- responsibility to print this thing up. Print this up.
- A: Well, prepare it to be printed. We have a separate section that actually
- prints it.
- Q:Ok, how so you handle distribution? Tell us how that process works.
- A:Distribution is determined by whatever the regulation is. In this case it's
- an AR, which determines where it goes, how many copies are reproduced.
- What we do is we prepare it for reproduction. When it goes up front it will
- have, where you indicated earlier about the date.
- Q:The effective date?
- A:Right. At the top those will just be X's when it goes up front. Our job is to
- go through, make sure the formatting is correct. Make sure the page ends
- correctly, insert the date, and, you know, make sure the appendages are 17
- labeled if they are there.
- Q: Wait a minute. When it goes up front and goes through all this process it
- doesn't have a date on it? It has X's you say?
- A:Right. When it's submitted for approval it has X's on it and the reason is 21
- it can take, I've seen regulations that have been submitted that have been 22
- up for signature for issues relating to whatever the issue is in excess of a 23 24
- year, 18 months, 2 years. It just depends. So if that date is on it today, I
- put today's date on it and I sent it up and it has to go through Darrell to

- get to you. And Darrell says, "I have issues." And it takes eight weeks to
- resolve those. And you're Commissioner and you approve it. You've
- approved it and eight weeks later Darrell signs off on it. Well it has an
- eight-week-old date before you even sign it. So he reason is it has a fresh
- date on it to account for that processing time.
- Q: Well you know when it came back from Mary Bungo, Mr. MacArevy,
- you said Mr. MacArevy hand-carried it up. Why did he do that?
- A: Cause she, she had questions. And some of the questions, some of the
- issues that she had flagged throughout the regulation and I don't know
- 10 what they were off the top of my head, were organizational things
- apparently. It was apparent from reading her notes or whoever's notes 11
- 12 they were but that's who they were addressed with, that those were things
- 13 that were not understood by the person reading it.
- Q: And that's in the file?
- 15 A:Let's hope they're in the file. It should be in the file.
- 16 Q: Aren't they supposed to be in the file?
- 17 A: Well they're like little yellow stickies sometimes they...
- 18 Q:They're supposed to be in the file.
- A: They should be there. That's what I'm saying. I can't say. I can't tell you 19
- 20 definitely.
- 21 Q:That they actually are?
- A:Right. They can fall off. I hope they're there. They're supposed to be
- there. So he addressed those issues with her and it was determined after 23
- that review with her, ok, now everything's ok with her except for a couple 24
- minor grammatical changes. Because we needed ARI-1.02 in place for 25

- accreditation it was agreed that he would, you know, go back make these
- changes right away. He gave it to me, or he brought it to me, he'd talked
- to Mary and I told him just take it up. She signed it right then and he
- handed it back to me signed.
- Q:And what? You put an effective date on it a week later? Two weeks later?
- A: Well, the date that goes in is actually the date that the processing of it is
- finished. It doesn't always coincide with.
- Q: With the date the Commissioner signs it.
- A:Right. It's not always that same day.
- Q: And in this case it was sometime in March.
- A: Well, I know the regulation is dated in March. I don' know off the top of
- my head when it actually came back signed.
- Q: Could it be March 6th, March 7th? Do you know?
- A:I don't know.
- Q:Ok, it's got a date. The X's have been replaced by a date. Then what
- 16 would you do with it?
- A: Then it is reviewed by clerical staff to make sure that, you know, again we 17
- talked earlier about the instruction portion, that if it says remove pages 1-
- 21 and insert pages 1-23 that there's actually 23 pages there. That in the
- preparing of that for reproduction that now there's not actually 24 pages
- because computers being what they are, it just kicks it a page down or 21
- something. So they check those kinds of things to make sure the format is
- correct. Then it's taken downstairs to the reproduction section. They
- reproduce it. When they're finished they call the project person. He goes 24
- downstairs and makes sure the pages are printed the way they're supposed 25

- to be printed. So you don't have the stuff upside down, or repeated that
- you don't have obvious reproduction mistakes. It's taken to the mailroom
- and they disseminate it to the field.
- Q:So dissemination occurs after the final date goes on.
- A:Yes.
- Q:Is there any tracking document that displays. That shows when the
- dissemination date is?
- A: The dissemination date is different for every organizational segment.
- Because of the process that's used, if something is dated today, is you're
- in Erie, you're not going to get it as fast as Harrisburg. That's just the
- nature of the system. It can take varying amounts of time depending on
- where you're stationed to get the information. 12
- Q:What's it take on average on a document like ARI-1 from a week to two
- weeks?
- A:I would say for everybody to finally get it in the department I would say a 15
- week on average. That would be for anything.
- Q: Now in this particular regulation you had the dates affixed. You're set for 17 accreditation.
- Q: And you post a copy of it to the file? The historic file?
- Q: And that should be reflected in the historic file.
- A: What should be reflected? The date that the copy is put in?
- O:Yeah.

- A:Probably not because we close our file out when we take it to repro. So at
- that point our file is closed on it.
- Q:What's the distribution of it?
- A:You mean how many copies?
- Q:No, no. Who does it go to?
- A: Everyone who has an AR manual and all the libraries.
- Q: And when would it have gone to the Commissioner?
- A: As far as?
- Q.The final thing.
- A: Well it would have been in his normal distribution of all the other changes
- at that same time. And I don't know what the mailroom delivered, when
- it's put in his box by his staff. I don't know.
- Q:Ok, have you personally had a chance to look at the historic files of
- AR1-17
- A:Yes
- O:When?
- A:I pulled that file and looked through it subsequent to the affidavit and all
- the surrounding inquiries into, and basically what I'm looking for is to try
- to make a determination as to the integrity of the file.
- Q: Is it complete?
- A: Well, it's thick.
- Q: Is it complete?
- A: Complete in what? In what sense? I have no way of knowing. If someone
- had a conversation and failed to make a note and put it in there. I have no

- way of knowing that. So to say that it's complete, I can't make that
- statement.
- Q: Who was the person that looked at it before you did?
- A:It would have been Marie Marshall and she looked through it as a result of
- a request from Chief Counsel for information out of it. So she would have
- O:What's her name?
- A:Marie Marshall.
- Q:And who is she?
- A:She is one of the clerical staff.
- Q:When did she look through it.
- A:I don't know the date.
- Q:Is the date in there, in the file?
- A:There's a separate date because there was a number taken for or there was
- 15 a project initiated for the request from Chief Counsel for information. So
- 16 that's a separate issue.
- Q:What do you mean that's a separate issue?
- A: Well it's a separate project from the 1-1. The 1-1as it exists, as a historic
- 19 file doesn't have, you know, continue to be updated with requests for
- 20 information from it.
- Q:Did Marie Marshall's notes indicate what she was looking for in that file? 21
- A:I don't recall.
- Q:Did she remove any parts of the file?
- 24 A:I believe she photocopied some parts if the file and provided those to
- 25 Chief Connsel

- Q:Do her notes indicate what she photocopied?
- A:I don't know. They probably do but I don't recall.
- Q: And they indicate when she did this?
- A:It would indicate depending on the situation there may be correspondence
- even with whatever was copied attached as an enclosure. There may be a
- copy of that. Sometimes those are requested, sometimes they're not but I
- this particular case I just don't know.
- Q:Did Marie Marshall look at that file after the revisions that occurred in
- 2001 were posted to the file?
- A:Yes.
- Q:You don't recollect what she copied?
- A:No I don't. I don't know what sections she copied out.
- Q: Are the copies with the X's on the top ever posted to the historic file?
- A: Yeah, they're maintained there.
- Q: They are maintained there. And there's a sub-file which before any
- changes are posted to the file show the last effective date of the file. For
- example, there's a file in there showing, in the historic file a copy of 17
- the '97. 18
- A: Yes, that's correct.
- Q: And then you would post any revisions. I mean the history, what you go
- through with revisions, right? And then you would post the dates, any 21
- dates of when any revision actually occurs, so then that would be posted 22
- to the file. The latest effective dates the actual of any changes to the
- document.

- A:Right. There's a, the final, there's a copy of a produced version that's
- distributed that's placed in a file. That's one of the first things you see
- when you look at it,
- Q: And that's placed in there after you get it by mail or do you place it in
- there before?
- A:Normally Marie will put it in. What Marie does is she files the historical
- files and when she, basically they're put in a box for her to go through and
- prepare for filing. She labels them a certain way, by change number.
- She's the one who will normally pull a copy of the reproduced version,
- the one that was disseminated, the Change Sheet attached and she'll put
- that in. Normally that's the case.
- Q:Is it posted before it's disseminated or after it's disseminated?
- A:It would be when we get our copies back. So it would be when we get our
- copies back and it may be you know, two weeks before she actually goes
- through and does, you know actually file that historical information. And
- when she, normally when she does that if it's not there, the project person
- didn't put it there, she'll ensure that it's there.
- Q:And if she gets a request for a file from Counsel's Office she's going to
- check what's in her filing bin I would hope.
- A:Yes.
- Q: Absolutely.
- A:Yes, well the first place she would look is where it should be. It should be
- filed if its finished and if its not there.
- Q: You check your filing bin.

- A:If its not there it could be that the project person failed to submit it. That occasionally occurs too.
- Q:But you know that copy with the X's on it? That was done quite some
- time, actually that would have been posted to the file before it went to
- Hickes and Hickes made some recommended changes. And before it went
- up to Mary Bungo and Mary made some changes.
- A: There may be numerous copies with X's in there as various changes are
- Q: Absolutely. So the minute that you see. Do you have time?
- MR. MARCECA: Yes sir. I have about two minutes left.
- MR. BAILEY: Ok, let's suspend at this point.
- MR. MARCECA: We're going to stop the camera and it is now 11:58.
- MR. BAILEY: Turn this one on so I don't forget.
- PAUSE WHILE VIDEO TAPE IS BEING CHANGED.
- MR. MARCECA: The time is 12:08 pm on October 23, 2001 and we're
- continuing the deposition of Walter J. Margeson.
- MR. BAILEY: Thank you. Mr. Margeson just a couple questions to follow-
- up on the end of where I was. On the distribution what is the distribution
- of this regulation AR1-1 what's the distribution.
- A: Well its distribution AR and again it goes to everyone that has a set of AR 24
- -21
- Q:You said commanders and libraries I think.
- A:No it's any one who has an AR Manual and libraries.
- Q:Its not distributed per capita?
- A:No.

- Q:Why did you place subsection "C" in this AR then? Because when I asked
- you about this as far as a perceived policy need was concerned you had
- indicated some civilian out there that doesn't know this and doesn't know
- 4 that. If you're not going to distribute this to them and you're not going to
- do a distribution to every member you know, per capita why does it
- belong there?
- 7 A" Well that's the purpose of the library. It is there for everyone to have
- access, and routinely we hold personnel accountable for numerous
- 9 regulations that they're not provided a personal copy of.
- 10 O: Was there any discussion among anyone at all about it going in a
- different, like in a field manual, or somewhere in a different distribution?
- 12 A:You mean that particular section, Chain of Command?
- 13 O:Yes.
- 14 A: Again this goes back to my initial conversation with Captain Riley and
- my indication to him that we had an active AR1-1 Project and that seemed
- to be the logical place to put it. You know the departments organizational
- structure seemed the logical place to put something about the command
- is structure.
- 19 Q:Ok. That doesn't seem logical to me but that's ok. I don't walk in your
- shoes and I prefer to your expertise. There wasn't some discussion about
- this is a convenient vehicle for getting it done right away was there?
- 22 A: Well like I said in my mind the AR1-1 was the appropriate place for this
- to reside and I had an active project, and its not uncommon when you
- have an active project to try and fix or revise as many things as possible

- so you don't have to make change after change to the same. I mean we try
- to do that. We're not always successful with that.
- 3 Q: Well was there some urgency with this?
- s END AUDIOTAPE ONE SIDE TWO. BEGIN TAPE TWO
- MR. BAILEY: You had indicated that subsection "C", you know, although
- there was a perceived policy need, that it was not needed for accreditation
- o purposes.
- 11 A:That's correct.
- 12 Q:My question is, was there some sense of urgency and if there was why?
- 13 A: Well, I don't know. Again the sense of urgency was for the 1-1in general.
- 14 This just happened to be plugged in to that project because we had it open
- and that's normally how we do business. You know it became, this
- particular section had no urgency other than it was part of something else
- that was needed. And I understand what you're trying to say. You want to
- 18 know why.
- 19 Q:I want to know why you wouldn't
- 20 A:You want to know why we felt we had to plug this particular language in
- at this particular time and why didn't we wait?
- 22 O:Yes. Again I want to go back to that hundred year wait and the fact that
- all of a sudden somebody developed, Major Washington calls Captain
- 24 Riley who calls you and why didn't Captain, why didn't you pick up the
- 25 phone and call Major Washington, ask him what he's looking for. Why

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- didn't he send a form into you? I mean, the irony of all this is that we're
- dealing with something that has to do with an important procedure and it
- just seems to me that's an odd way to proceed. And I'm not saying it's
- 4 improper but it seems odd to me. Nothing is written to you. Nothing is
- submitted to you. There are no phone calls. You know it's somebody
- 6 looking for a Christmas tree. Something to hang an ornament on for some
- 7 ulterior reason. Obviously that's where I'm coming from, clearly. I'm not
- saying that's why but it seems to me and I'm asking you if you know
- anything about that? Is there anything in the conversation with Mr. Riley
- about when this needed to be done? If it needed to be done quickly why it
- went on to AR1-1? If you're looking for accreditation? I would assume one of their compliance issues just might be the integrity, if you will of
- the purposes of a regulation. You don't have some catch all regulation
- with all kinds of odd things in it. I'm not saying that this is that odd but I
- just don't understand why it went there. Why it wasn't in a field-
- regulation. One of the basic issues is met with a regulation of this type is
- 17 if it's going to apply to every member. And you're the one that raised the
- issue of civilian employees. It isn't even distributed to them. Can I ask did
- you, was their some kind of advisory sent out to civilian employees about
- this new ordinance, this new regulation? Do you know?
- 21 A: What do you mean by advisory?
- 22 Q:Well, you know. Everybody is, you know the Commissioner sends out an
- 23 advisory, here's a policy void. There's a problem we've had. We're going
- to add this subsection "C" here. You were advised you're not to
- 25 circumvent your Chain of Command, which I would assume everybody

- knows any way. But the point in fact is, was there any teaching, seminars,
- distribution to the 4000 some odd members of the Pennsylvania State
- Police about this very important subsection "C"?
- 4 A: Well there would. There's a requirement in another regulation that deals
- with roll call and staff meetings that requires that new and newly revised
- 6 regulations be brought up. Now whether they read those or whether they
- just tell people this is something that's new, you need to review it and
- trust them to do it on their own but the fact that there's a revision is
- required to be brought to everyone's attention.
- 10 Q:Every regulation?
- n A:Yes.
- 12 Q:In the Pennsylvania State Police?
- 13 A:Yes
- и Q:How big is that bin that Miss Marshall has? Does it ever get filled up with
- is a lot of different changes?
- 16 A:Oh yeah. Absolutely.
- 17 Q: And they're read at every roll call?
- A:No, I didn't say that. I said that there, the fact that there, or the fact that
- they're there is to be brought out. If there is something that's particular to
- your function, let's say you're a (MIXAP) person and there's a (MIXAP)
- regulation that's of particular interest to you, sometimes they'll go over
- 22 that at roll call as part of training. But generic types of regulations like the

AR1-1 would be more than likely would be; people would be advised that

there's revision to it and that they're to review the revision.

- 1 Q:Once you came up with the language for the change did you go back to
- 2 Captain Riley with it?
- 3 A:I don't recall.
- 4 Q:How about Major Washington?
- s A:I never talked to Major Washington at all.
- 6 Q:How much time passed between this phone call from Major Riley and you
- 7 place the subsection "C" in the revision.
- 8 A: Well, it was, I don't know off the top of my head the exact time. Again it
- 9 was nearly a year that it sat idle. So potentially it could have been that
- 10 long.
- 11 Q:Major Washington could have called you a year before.
- 12 A:I'm just saying that it could have been. I don't recall off the top of my
- head when those conversations took place but that language was added
- when this was resubmitted. That was not part of what had originally been
- 15 submitted.
- 16 Q:When did that occur?
- 17 A:That was back in '99 when it was sent back by Colonel Hicks because it
- 18 failed to address...
- 19 Q:So it was added after that.
- 20 A:Yes, it was added after that.
- 21 Q:Yes, after that. We know it was added some time the in the year 2000.
- 22 A: Probably.
- 23 Q:You said it was after1999.
- 24 A:Right.

- 1 Q:Doesn't leave a whole bunch of space in between. You mean you could
- have gotten this call in the year 2000?
- 3 A:No, cause it was resubmitted, right, it was resubmitted in 2000.
- 4 Q:So you're saying that language was resubmitted somewhere around
- 5 October
- 6 A:When it was resubmitted, whatever date that was, this language was made
- part of that.
- 8 Q:If in reviewing a historic file there were some changes that came to you
- from other persons sometime around September or October is that correct,
- 10 of 2000?
- 11 A: Yeah, ah, that's possible.
- 12 Q:I may be mistaken but I don't think subsection "C" is in there. I don't
- 13 know, I may be wrong.
- 14 A: I don't know.
- 15 Q:But if we look at that historic file, and provided it's complete it should
- show us in written form when that subsection "C" was first recommended
- 17 right?
- 18 A: It should.
- 19 Q: And it's going to show that it came from you, right?
- 20 A: It should.
- Q:Do you know of any recommended changes to AR1-1 that were made
- after the beginning of the year 2001?
- 23 A: Not, not, I don't know.
- 24 Q: You mean you can't tell us if there were not any changes?

A: It depends on what you mean by changes. I know there were changes that

- 2 Mary Bungo sent back, grammatical things that she wanted changed. So
- yeah there were changes like that,
- 4 Q: Well do you know whether the language of subsection "C" was in what
- 5 was given to Mary Bungo?
- 6 A:Yes it was,
- 7 Q:How do you know that? You don't know when you got it or the request
- from Mr., Riley so you don't know when you put the language together.
- A: Well it was signed when it was taken up front.
- 10 Q:To Mr. Hickes you mean?
- 11 A:Yes.
- 12 Q: When did Mr. Hickes sign it?
- 13 A:I already told you I don't remember.
- 14 Q:Subsection "C" was I there when it went to Mr. Hickes?
- 13 A:Yes.
- 16 Q: And you don't know when it went to Mr. Hickes?
- 17 A:No.
- 18 Q:Ok. Thank you very much. I think that's basically it for me.
- 19 MS. REYNOLDS: I just have one question, Mr. Bailey referred to your
- affidavit. So you recall doing this affidavit?
- 21 A:In the Chief Counsel's office.
- Q:Is the information in that affidavit correct?
- 23 . A: As far as I know it's correct.
- 24 MS. REYNOLDS: Ok, thank you.

- 1 MR. BAILEY: Thank You very much for coming here today. Thank you for
- testifying. I appreciate it. I may have a few material questions for you. If I
- do I'll submit them to counsel if I have any kind of questions. I mean
- 4 there are a few dangling participles here, ok? And I'm not going to leave
- your deposition open for that. There are procedures under Federal rules
- 6 for witness interrogatories and you are a very key fact witness as I'm sure
- you sadly realize by now. But the point in fact is well, that's unfortunate
- but that's the price we pay for living in a society incidentally of laws and
- 9 not men. No pun intended on subsection "C". But any way, in all
- seriousness if I have any additional questions, I may have, I'll get those to
- 11 Ms. Reynolds and she can communicate those to those you if they're
- material questions. Thank you very much.
- 13 A:Sure
- 14 MS. REYNOLDS: I'll go with you.
- 15 MR, BAILEY: Wait until he announces time.
- 16 MR. MARCECA: It's now 12:23 PM on October 23, 2001 and this
- deposition is now ended.
- 9 END TAPE TWO
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IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER

:1: CV- 00-0084

Plaintiff

Versus

PAUL EVANKO, MARK
CAMBELL, THOMAS COURY,
JOSEPH WESTCOTT,
HAWTHORNE CONLEY
JOANNA REYNOLDS and
SYNDI GUIDO, Et al.
Defendants

DATE:

February 5, 2002

PROCEEDINGS: Video Deposition of

Mark Grab

APPEARANCES: For the Plaintiff:

Donald Bailey, Esquire 4311 N. 6th Street Harrisburg, PA 17110

For the Defendant:

Joanna Reynolds Barbara Christi 1800 Elmerton Avenue Harrisburg PA, 17110

MR GRAB: I do.

CRYSTAL LYDE: Thank you. Mr.

Bailey can we have a sound check please?

MR BAILEY: Yes My name Don

Bailey, attorney for plaintiff Darrell G. Ober, 4311

North 6th Street Harrisburg Pennsylvania, 17110,

717-221-9500. Joanna?

JOANNA REYNOLDS: My name is

Joanna Reynolds. I'm Assistant Counsel with the

Pennsylvania State Police. My address is 1800

Elmerton Avenue Harrisburg PA, 17110 and I

represent the defendants.

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BARBARA CHRISTI: Barbara Christi, Chief Counsel, Pennsylvania State Police, same address and phone number as those given by

16 Assistant Counsel Reynolds.

MR BAILEY: Mr. Grab as indicated this 17 18 is a video deposition. The deposition will be recorded here on the videotape which will be 19 available here anytime that you would want to 20 come and look at it. You have a right to review it if 21 you want to purchase a copy for your own use you 22 can do that. Of course the attorneys on the other 23 side can do so. During the deposition if at anytime 24 I should make an error and I'm sure it will be an

Non Grah

CRYSTAL LYDE: Be advised the video and audio is in operation. My name is Crystal M Lyde, L-Y-D-E. My address is 4310 Hillsdale Road Harrisburg Pennsylvania, 17112. I've been contracted by PR Video Incorporated to be the operator for this deposition. The case is in the United States District Court for The Middle District of Pennsylvania. The caption is Darrell G. Ober versus Paul Evanko, Mark Campbell, Thomas Coury, Joseph Westcott, and Hawthorne Conley. The docket is 1-CD: 01-0084. The date is February 5, 2002. The deposition is being held at the law office of Don Bailey, 4311 North 6th Street Harrisburg Pennsylvania, 17110. The video deposition is being taken on behave of plaintiff 15 Darrell G. Ober. The witness's name is Mark Grab. The time now is 1:50 p.m. Mr. Grab would you raise your right hand for me please? 18 Would you state your name for the 19 record and spell it? MR GRAB: Mark, M-A-R-K, middle 21 22 initial A, Grab, G-R-A-B CRYSTAL LYDE: Do you so swear to tell the whole truth, nothing but the truth, so 24 help you God?

error if I do it okay. You correct me and stop me if

2 I'm wrong. But if I should interfere with you or

3 some how make it difficult or impossible to

4 complete an answer make sure you correct me and

you provide a full and complete answer so that you

6 can respond fully. One thing I do that's a little

7 different, I understand that you probably have a lot

s more experience then I do for that matter,

9 attending legal proceedings and that sort of thing.

One of the things I do a little differently then most

attorney is I do not mind if you have a question of

to the state of th

me about a question or if you want to know were

13 I'm going with a group of questions I don't mind

14 responding to you. I don't mind giving you an idea;

15 you know something that came to an offer, if you

will. So that you maybe want to cut to the chase

or you perceive or have a curiosity for that matter

about questions I don't mind that. If at anytime

during the, I don't know if you're being represented

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by opposing counsel or not I really don't know. I

assume that you're here in an individual capacity if

you are at any time you want to take a break for any reason that doesn't matter. We'd be very very

happy to accommodate you. Counselor I guess the

usual stipulations objections except to time will be

reserved except as to the form of the question. Is that okay?

OPPOSING COUNSEL: Yes

MR GRAB: I guess I should clarify that counsel from PSP does not represent me and while I'm here as an individual. I'm here at your request for deposition.

MR BAILEY: Alright sir. There's nothing here that involves your par say then as a fact or information witness. So, I mean, that's correct. Okay, Mark. Is it okay to use it that way?

MR GRAB: Sure

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MR BAILEY: Okay, Mark where do you work and what do you do?

A: Currently I'm with the Governor's
Office of Administration, Bureau of Labor
Relations. I handle contract negotiations
representing the Commonwealth of Pennsylvania
for various unions, against various unions. I also
handle labor arbitration.

Q: And how long have you been doing that?
A: It's been in Labor Relations in

A: It's been in Labor Relations in Carlisle for eight years.

Q: Wow

preparation for trail. If you can help. I guess what I'm pleading with you to do is to provide full answers within the spirit of a question sometimes. Because I'm not sure I can exactly ask the right question. If I don't you just get me back on the track. Now let's say Pennsylvania State Police roughly six years. During that period of time did you hear of occasion to be involved in processes which involve Mr. Ober?

A: Yes I did.

Q: Okay go ahead.

A: One of my releases of Labor
Relations Coordinator is to review and either
respond to or coordinate a response to contract
and disciplinary grievances. And I recall receiving
one or two grievances maybe more from Captain

Ober.

Q: Alright now in the lawsuit Mark that Mr. Ober filed he makes references to a number of issues. The issues in the lawsuit is a civil rights suit. The issues in the lawsuit refer essentially to a genre that have come to be characterized by a District Federal Courts rather as First Amendment violations, adverse employment actions that sort of thing. Specifically

I transferred to the Governor's Office six months ago. All time of Labor Relations prior to that for the Commonwealth was at the State Police. Yes I was going to ask you about that. It's my understanding that for some period of time you did, is the correct term Labor Relations? A: I was Labor Relations Coordinator for the Pennsylvania State Police. Q: Okay, and how many years did you 10 do that? A: Six years 12 Q: I don't know if you have, you 13 probably have some type of rumor or general familiarity with a lawsuit that's been filed by Captain Ober. What I'm going to do now I'm going to ask you with your experience it's pretty clear. From time to time I'm going to ask a question. I hope you will bare with me. I have a certain knowledge of the area that you deal with. My expertise is not in that area, but I have knowledge of it. Bare with me because I may ask a question from time to time that may not make sense to you. But if you'll take the time to explain for the record,

do you a have recollection of a transfer, an effort to transfer Captain Ober to Washington Pennsylvania by the Pennsylvania State Police?

and remember we are preparing these things in a

A: Yes

Q: Can you tell me, give us a little background as to what was involved there please?

A: I had no involvement in that. I can

not respond to that. I know I heard through the
Labor Relations process that this was an intent to
transfer Captain Ober somewhere in the western
part of the state.

Q: And do you know what the reason for that transfer was?

A: No

Q: Do you know what the transfer entailed? What position he had been in?

A: I believe I recall Captain Ober was
the Director of the Internal Affairs Division and the
designated was to be an Executive Officer for an
area Commander. If I recall correctly.

Q: Did Captain Ober have occasion to grieve that situation?

A: Yes

Q: And what was the purpose of this grievance? Do you remember?

To contest the utilization of the transfer process by the agency to move him from the eastern part of the state to the western part of the state. Specifically again if I recall correctly, some of the verbiage within the grievance Captain Ober offered the argument that based upon the Collective Bargaining Agreement that in the event of transfer that the least senior member within a given unit was the member to be transferred. Captain Ober's argument was that because he was a Captain that the unit in question, or that unit which was applied within a contract would all those who are so designated as Captains that he was not the least senior Captain in the 14 Pennsylvania State Police and therefore should not have been transferred.

reach an opinion at some point during this process that he was being transferred for disciplinary reasons?

Q: Did you reach a conclusion or

A: I would not have been pertinent to any information that could cause me to come to that conclusion.

Q: Have you ever come to that conclusion.

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Yes those were issues that eventually there was some kind of a board, a special appeals board or something.

A: Well the grievances came into my office. The process is that either myself or my subordinate heiress would review that grievance, conduct an investigation into the allegations the facts of the grievance, we would then met per contract with what's known as the PSTA Grievance Board each month and discuss grievances. At the subsequent months PSTA Grievance Committee meeting, and the big PSTA Grievance Committee is comprised of five members who make up the PSTA 13 Grievance Board and then representatives of the 14 Commonwealth, of one which I was. The following month we had the meeting and at that meeting it was offered that because Captain Ober's issues and those grievances dealt with reimbursement of expenses and or time. That they would be properly

the Collective Bargaining Agreement. And they eventually made a decision is that right?

> A: Yes

handled by the Lost Damage Reimbursement

Compensation Appeal Panel. That's outline within

You have to understand that my involvement was abbreviated quickly once actions began to be filed by Captain Ober. Our involvement was essentially removed. My understanding was it was part of the lawsuit and it was being handled elsewhere. Part of what lawsuit? A: I guess it was an injunction or something that was filed. Captain Ober filed an injunction to stop the transfer. Again I was not that pertinent. I was not within that circle. O: Who was within that circle? 12 A: / I understood it was being handled through Deputy Commissioner of Administration, Tom Coury and Chief Counsel's Office. O: Now in that circle, you mean the 16 evaluation of Mr. Ober's legal rights? In the response to those actions 18 filed by Captain Ober.

A: Regards to the transfer and any 21 issue after the reimbursement compensation issues that I had handled. Which I believe where the first one or two grievances that were received by the department.

Q: Well

What was their decision?

The decision was they reimbursed Captain Ober his day of leave. I believe they reimbursed him for the expense of the hotel. I believe they denied the reimbursement of the expense of a picture frame.

Was that decision appealed?

I'm sorry

Did you do a good job on that thing O: Mark? Did you work at it?

I didn't do any job on it.

O: You didn't work on it?

A:

Who did? 0:

A: The way the process is when an action well let me back up. Normally when something goes in front of that panel, let's say you're a State Trooper and you lose a radar unit. That information is reported. That information then goes to the Deputy Commissioner of, gosh I

want to say I get those two always confused

Operations or Staff. It would have been Lieutenant

Colonel Hickes at the time. Lieutenant Colonel Hickes reviews the facts, determines whether or

not negligence was involved. If negligence is

involved then Lieutenant Colonel Hickes would issue a directive that the member would have to reimburse the Commonwealth of Pennsylvania for the moneys. If the member then decides to appeal that decision it goes in front of this panel. We got this action in a different way. We got it through a grievance, but it was the decision of the ten people present at the monthly PSTA Grievance Committee unanimously that it was a matter best handled in front of the appeal board, this tri-part type panel. Once that decision was made my only responsibility despite believe other wise was to take that grievance file that I had received and...

Q: Belief other wise by who?

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A: Apparently by Lieutenant Colonel
Coury and Chief Counsel's Office. Is to pass that
packet into the LA Representative on the
committee and at that point then my involvement
is done

Q: Did you do a poor job of that?

A: No I don't believe I did.

Q: Did the Pennsylvania State Police and/or their Chief Counsel's Office think that you did a poor job of that?

A: That's what I was told. Linda

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Reynolds, Ms. Christi, Linda Bonney, and Lieutenant Colonel Coury.

Q: When you did?

A: I encouraged the meeting. In fact I demanded the meeting at that point.

Q: Why?

A: Because I was insulted.

Q: Why were you insulted?

A: I was insulted for a number of reasons. First of all that I would be accused of mishandling a case for the department,

misrepresenting the department. But I was also a

little insulted that they weren't aware of what the

4 process was in the department, and I wanted. I

mean we're talking about the Deputy

6 Commissioner of Administrations the individual

who is in my chain of command. My job is to

represent that department. I don't want anyone

thinking that I was engaged in nefarious acts. I wanted the opportunity to have "my day in court"

and explain to them what the process was and in

22 fact that I had not present any presentation. That

23 no one had presented any presentation, but that

meeting was never granted.

Q: What was the amount of money or

Bonney, Director of Bureau of Personal, called me into her office at some point after that decision was made.

Q: What did Ms. Bonney tell you?

A: She told me that there is going to
be, in her words, there was going to be a tribunal
and that Chief Counsel and Lieutenant Colonel
Coury were very upset with my shabby handling of
the appeal case for the reason.

Q: I don't know you. I have a hard time believing you shoddily handle much of anything. What as your...well tell me what the shoddy handling what you supposedly did was.

A: That's what I ask Mrs. Bonney. At first what I pointed out to her was I did not, what was conveyed to her was that I had not represented the department well in the argument. I pointed out to Mrs. Bonney, in fact I'm surprised she didn't know it, but I pointed to Mrs. Bonney that we don't present an argument in front of this appeal panel. They get the documentation the appeal panel meets and that's it. There is no

argument presented, no case presented. So I was
 more then willing to go and meet with, it was my

understanding that I was to meet with Ms.

value of services involved?
 A: Well it would have been eight hours
 of annually or personal leave which is in effect a

4 monitory equivalent of one days' pay, at Captain

5 Ober's then current rate. It's a big pay scale.

Q: Whatever it was. It was a base

pay.

A: Yeah, it's good money. I'll say that.
It's better then I was making at the time. Then
the other would have been, I believe it was the cost
of a hotel. What average state rate \$ 60.00 some

where around there?

Q: Okay now was this about an investigation that the FBI was conducting into allegations of..

A: It was connected to it, ves.

Q: Connected to it?

A: Yes

Q: How do you remember it being

o connected to it Mark?

A: When I investigated the claims that
Captain Ober made in his grievance for the
reimbursement what I had found was that the FBI

had approached Captain Ober as the Director of

Internal Affairs Division and advised him that there

was an investigation being conducted. That there was an alleged job selling scheme within the Pennsylvania State Police and the indication was it the potential to go high within the department and that they would be coming to him in his capacity as the Director of Internal Affairs from time to time for assistance in the investigation. Captain Ober made the claim within his grievance that he did sell with the concurrence of Lieutenant Colonel Robert Hickes. My role at that point was to validate that allegation. I contacted Lieutenant Colonel Robert Hickes.

> And he said, "Yes" O:

He said, "Yes". I told him to A: cooperate and do whatever they needed.

Q: And that was your job? Your job was essentially to see that a proper presentation of facts and circumstances was before this board.

Right

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wrong.

A: Q:

A:

It wasn't an advocacy position per say. It was a position; the term in which we 21 usually refer to in court proceedings is argument, 22 which doesn't mean a damn thing. Your job as a 23 technician was to do a thorough of making sure 24 the facts and circumstances were there, and in fact

for the Pennsylvania State Trooper's Association.

It's my recollection that the one from the State Trooper's Association was Bruce Edwards. Who's now, he's the current president now, and I believe retired Major Leonard Washington for the department. It would have been the Governor's Office job, once it went to this appeal panel, to gather any other purgative fact. Q: Right A: My role was simply to turn over what I had. 11 And you did that? O: 12 A: 13 You weren't ever asked to alter O: what you turn over were you? 15 A: No And that's something you would O: 17 never consider and contemplate, right? Absolutely not. A: What did you do wrong? Excuse me

What did you do wrong?

To my knowledge I did nothing

I don't know what you did wrong.

Colonel Hickes said "yes". That's correct, right? A: But let's not get it confused. My role was to insure that the Pennsylvania State Police, Bureau of Personal, Labor Relations had sufficient information to form an opinion and to argue or resolve the case in front of the PSTA Grievance Committee. My job was not to provide expert consultation and advise to this tri-part type panel. That would have been, this tri-part type panel is comprised of an individual by the name of William Mullin who is from the Governor's Office Administration, Bureau of Labor Relations. He's 12 now my co-worker. Bureau of Labor Relations? Q: A: Do you know his signature? I've seen it enough times. Is that his signature there? 18 JOANNA REYNOLDS: Let me see the 19 document he's showing you. MR GRAB: To be honest with you I 21 couldn't say. I don't recognize that. 22 MR BAILEY: Okay 23 MR GRAB: Then there are two other

representatives. One for the department and one

I'm just asking.

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A: Fair enough

Q: Mark want I'd like to do is change gears just a little bit. I want to ask you questions. These are general or generic questions. They are based upon your knowledge and experience, which is rather unique. There are not a lot of people that do what you do. It's based upon the assumption that during the period of time that you have performed your duties that you've handled a lot of grievances. That you are intimately familiar with the process of how they are handled and what goes into, at least by experience, the evaluation of

grievances, the presentation of grievances, and the

judicatory process involving grievances. Is that fair

to say? O: Alright sir. With the Pennsylvania 81 State Police is it proper within Pennsylvania State Police regulations as you recollect them, to make an involuntary transfer for disciplinary reasons? Is it proper? Is that the word you used? Yes sir. Is it lawful or proper to make it..

A: That is a practice yes. They do it.

They're not very successful in arbitration, but they
do form time to time initiate involuntary
disciplinary transfers. Transfers in conjunction
with disciplinary action.

Q: Is it proper to say that under Pennsylvania State Police regulations and proper practice, if an individual is guilty of misconduct that fundamental due process standards dictate that a person be told what they did wrong and that any discipline meted out is in accordance with standard by virtue of a contract or by virtue of established practices within the Pennsylvania State Police? i.e. Simple terms. Mark you do something wrong. This is what you did wrong. This is what we found, and this is what the process brings with

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JOANNA REYNOLDS: Before you
answer. If you're asking about whether
fundamental due process requires that I would
object, because he's not an attorney. If you're
asking him if certain things are required to be told
of someone in his experience as a Labor Negotiator
or as a person, who handles Labor Negotiations
then I think it is an appropriate question. I'm not

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had is you started out with does it require fundamental due process protections. Then you switched to his experience in his current job and in his past job. So I guess what I'm asking is are you asking him about does fundamental due process require this, which again I think is a legal question and he's not competent to answer that? Or are you asking him in his job as a labor negotiator does he believe that certain things are entitled to be given to an individual who's grievance... MR BAILEY: Let me again say that I think that's an objection, which under our stipulation of objection he may respond. That objection is taken to time of trail. The issue of whether or not he's qualified, which I think he is, but regardless. First of all what is due process in a

grievance situation is not for attorneys it's for the
court. It is a law question.

JOANNA REYNOLDS: That's my point.

MR BAILEY: That doesn't he can't
respond though. You're not the court.

BARBARA CHRISTI: Are you asking him
Grab to respond as a lay person you know from the
keybe version of what looks like fundamental due
process or are you asking him to respond as the

sure. You did both of those into that question. So I think you need to rephrase your question. MR BAILEY: Let me say this. First of all I think questions of what fundamental due process are, are really common sense things. I don't think it takes an expertise of an attorney and I think there's tons of people out there that understand those thing as well or better then attorneys. Number two, cause I really do think they're common sense things. Secondly, I also think they are part of American life and procedure every where. The idea of being told you know what you did an opportunity to confront or respond, and some type of adjudication according to know or established standards. I'm really asking him based on his experience. I mean I object to your objection, but that aside. I am asking him based on the extensive experience in dealing with grievances and practices in the Pennsylvania State Police. I admit that the reason I'm asking and why I brought him in here as a witness to question about these processes not about individual knowledge. Okay that objection is stated, it's on 23 the record. 24 JOANNA REYNOLDS: The question I

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point of view of what you just said, as a court decision? MR BAILEY: Barbara that makes absolutely no difference. You can raise that question with the judge. Your objection is noted. I just want to go on with the deposition and question him. You know, you can't tell him not to respond anyway. You're not representing him here. So let's let me just get on with the deposition. Your objection is noted. I'm not going to spend much BARBARA CHRISTI: I think we do have an interest in the clarity of the questions 13 MR BAILEY: Barbara 14 BARBARA CHRISTI: Put to any witness 15 and I think all we're asking is if you'd clarify. If your asking him based upon his expertise in the field of Labor Relations, or based upon the Collective Bargaining Agreement, or practice in president in the State Police during his time and experience there then certainly there's no objection there. But it wasn't clear as to what you were asking in this prop.

MR BAILEY: I'm gonna say again you've

stated your objection. It is noted. It can be taken

up at a later time according to our stipulation. I'm going to continue on and ask him. This is all this is doing is delaying us, and our debate here about the rightfulness or wrongfulness or appropriateness of the question. Which I have no doubt in my mind it's an appropriate question, but be different. If something to be resolved later.

BARBARA CHRISTI: Do you have a recollection counsel of what the question was?

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MR BAILEY: I'm going to go back to it. I'm just going to tell you that at this time we are debating something that by stipulation is suppose to be reserved to time of trial. Let me get back. Based on your knowledge and your experience, your understanding as a labor negotiator that the Pennsylvania State Police are bound by the same standard of fundamental due process that govern other legal processes in the United States.

MR GRAB: Due Process as it related to the concept, which is commonly use within the field of Labor Relations, every individual has the right to due process in disciplinary action.

Q: And if the Pennsylvania State

Police if a person for example doesn't do anything
thing wrong, but is transferred involuntarily

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of contract? Or is your question to me if there was...

Q: That's me question you just stated a lot better then I did. That's the question.

A: If there was a transfer effected that was not part of disciplinary action as long as it followed the provisions of the Collective Bargaining Agreement it would not be a violation of the Collective Bargaining Agreement.

Q: And if it did not follow the provisions of the Collective Bargaining Agreement?

A: Then obviously it could very well constitute violation of CBA.

constitute violation of CBA.

Q: When did you first learn that

Darrell Ober was being transferred to Washington
Pennsylvania?

A: I really don't recall.

Q: Do you remember when you learned it in that process?

A: If memory serves my it was
sometime after the Reimbursement Compensation
Appeal Panel had met and decided those first two
grievances.

Q: Do you know whether there are any Pennsylvania State Police regulations, Mark, that

because someone doesn't like them. Is that a violation based on your knowledge or experience of the Pennsylvania State Police Contract or State Police due process standards.

A: If that were to occur that would, I believe, a violation and abuse of the authority. There is a Collective Bargaining in place that comes to Bargain Unit and dictates how transfers will and will not work. The language is clearly in the Collective Bargaining Agreement.

11 Q: So if having read a lot of grievances
12 in the Pennsylvania State Police and going over the
13 Pennsylvania State Police grievances for a matter of
14 years. If a person is not notified of what they've
15 done and is not processed in a disciplinary
16 procedure according to the contract and is
17 transferred, as a matter as put in the penalty box
18 punished as it were, that would be a violation of
19 their rights under the contract. The judge and the
20 jury will decide whether or not it's a Constitutional
21 violation, but that would be a violation of contract.
22 Is that fair to say, Mark?

Is that fair to say, Mark?

A: Is your question to me, sir, that if there was a transfer effected that was not in conjunction with discipline would it be a violation

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specifically prohibit using transfers in lue of appropriate disciplinary action? If you know.

A: I don't recall.

Q: You don't recall?

A: They have so many regulations.

Q: You don't recall that one?

A: I'm trying to review in my mind AR-425. 46, field rank 11. There's a field regulation on transfers that I have, I could say for sure. Under oath sir I couldn't say for sure. There is a field regulation on transfer. It could very well have language in there to that effect.

Q: What is the term "penalty box" mean in the State Police departments?

A: The one and only time that I ever heard it used was when an individual in a command position had, in some way or another, done something that...

Q: Fell into disfavor?

A: Sure. They were then placed into a position to remove them from the position that they were in.

Q: The position of grace and veneer
A: It was... I heard it in passing one
time, and it was not in Captain Ober's case. But I

did get an off-handed comment that a person had been put into the penalty box.

Q: And what were the circumstances that you heard, I mean I understand that it didn't apply to Captain Ober's case, but what circumstances did you heard in part?

A: There was a Major who was placed into an Executive Officer's position for one of the Deputy Commissioners and the comment was he was there because it was the penalty box. I believe it was the individual that was the department disciplinary officer at the time Captain Larry Williams.

> Q: Black gentleman, tall?

A: Yes

Him? O:

> A: Yes

So but Larry Williams... he's the O: one that made the comment?

A:

Know where the state of North Q: 21

Carolina is? 22

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Excuse me?

Do you know where the state of O: North Carolina is?

Commissioner.

O: Who was the Deputy for

Administrations?

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At that time it was Lieutenant A:

Colonel Tom Coury.

Do you have a recollection of what Q: position Mr. Westcott filed?

A: These are the ones I get confused. He was the Deputy Commissioner of I believe Staff, but I could be wrong. It was either Staff or $\,\nu$ Operations.

Can you outline for us briefly 12 based on your experience, as you sit here today, the procedure to be followed in initiating a formal disciplinary action against a Member of the State 15 Police? 16

What is it you want?

Can you outline for us that 0:

procedure? What's involved? 19 Sure. A complaint is lodged with A: 20 the Bureau of Professional Responsibility. At the 21 time that it's involved the nature of the complaint 22 is ascertained. A number is cut. An investigator is 23 assigned, and the investigation takes place during which the who, what, when, where, why, and to

You know if Mr. Williams is there?

I don't know. I have no contact A: with Mr. Williams.

Alright. What Major was this Q:

about?

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I believe it was a Major Peacock. A:

He had been the Director of BR Technology

services and there was some issues. Alleged issues

between him and the Consultants. They were handling the admission for the department.

Q: Without getting into them. Do you know if Major or Mr. Peacock also had some personal domestic problems that figured in any of 15

A: I wasn't aware that that was the issue. I've become aware of that since, but not 17 that it was necessarily tied to that.

That's okay. Let's disregard that's 19 fine. Just set that aside. Who was this alleged, if it's an infraction let me not refer to it as and infraction. Let me refer to it as an irregularity. Who was the Commissioner at that time? 23

A: The entire time I was employed by 24 the Pennsylvania State Police Colonel Evanko was

what extent questions are answered by the

investigator interviewing various witnesses to

gather information. Once the particular outcome

of that process then determines whether or not it's

to be deemed a full investigation or a limited

investigation. Limited investigations the varies

that are reported on subject to from

correspondence typical in cases where there's just

no grounds for the alleged violation is one of the

ways it can be indicated. Full investigation is

when there's the need for a general investigative

report to be completed. That general investigative

report is then forwarded to the Commanding

Officer, either the Troop Commander or the Bureau

Director, who then reviews then determines

whether or not disciplinary action will be taken.

That adjudication results in, I believe, one of three

finds. Most common sustained, unfounded, or

founded. Or not sustained, unfounded, and

founded. If the Commanding Officer decides that

they're going to initiate disciplinary action they

issue a disciplinary action report. Give the

member an opportunity to arrange for union

feel pertinent to the allegations. Then once that

representation and/or provide any comments they

DAR is issued it goes to the department

Disciplinary Officer, who reviews the general

investigative report, the summary that's typically

done by the Commanding Officer, and determines

whether or not disciplinary actions will take place

and if so, to what extent.

Q: Well does the Commissioner... Who

appoints investigators to investigate people in the

State Police when that situation arises?

A: I believe AR-425 outlines that

that's the responsibility of two individuals, either

the Director of the Bureau of Professional 12

Responsibility, or the Director of Internal Affairs.

And AR-425 invest line authority of the

Commissioner to those individuals in making those 15

decisions 16

Well if I'm a Regional

18 Commander...what Regional Commander usually

make.. 19

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A Commander?

I'm sorry, Area Commander. Is Q:

that usually a Major? 22

A:

O: If I'm a Major, I'm an Area

Commander. Can I come out there and look out

of department regulations." Okay?

A: Okay

Q: Do I have an appeal right?

As the Major?

Q: Yeah, the bureau assuming...

A: Do you have an appeal right? Is

there a specifically outlined right to use?

O: Yes sir. Yes sir.

A:

10 Q: No I didn't know of any. I won't

11 ask or explain.

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A: No

Q: Okay so I go to BPR and BPR says

there's not a violation here. 14

> A: Which is one of the reasons why a

limited investigation would occur.

Okay that's fair enough. Now how

many, in that six years or so you worked for 18

Pennsylvania State Police, how many investigations 19

did you see where a person was investigated to 20

found out if they violated, if they did something? 21 22

That's typically the case. There is

an allegation if misconduct. The classic scenario is 23 either misconduct of some sort or performance 24

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deficiencies. The Bureau of Professional

through my command and take a couple of

Lieutenants and tell them you go investigate Joe

Some, if he's a member of State Police?

Without a complaint being filed?

Yeah no verification or anything

like that.

No I believe that process calls for

very specific action, and that is that first of all a

work force complaint and processing, use of force

it's a long term, use of force complaint and

processing worksheet. It's called a 101. Must be

filed out, and forwarded as a complaint to the

Bureau of Professional Responsibility. At which 13

time a decision is made as to whether or not the 14

Bureau of Professional Responsibility will

investigate that case. 16

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Q: What if the Bureau of Professional

Responsibility says no?

They would say...

Mark I'm sorry. I deserted you.

Let's say the Bureau of Professional Responsibility

says "Hey Major Bailey I understand you're 22

unhappy maybe or whatever, but this person didn't

do anything wrong and we're not gonna... You

know dipping his cookies in milk is not a violation

Responsibility typical does not get involved in the

performance deficiencies, but if there is an

allegation of wrong doing by a member of the

department an investigation at some level is

conducted

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Q: Okay and it that that the

allegation...I mean is this facetious as it might

sound? What if the allegation it that this

individual dips his cookies in milk. I mean I

assume that's not going to be taken seriously.

A: The process would call for the

12 Bureau of Professional Responsibility to first

validate the complaint. If it were an outside

complaint that is they'd want a complaint

verification form signed by the complainer, and a

decision would be issued a correspond would be

issued to the complainer that in fact the alleged

infraction was not a violation of departmental

policy, rules, regulations, and procedures. 19

Q: What if the Commissioner goes out 20

and appoints two Majors to investigate a Captain 21 and doesn't take it to BPR and just has it

conducted? What happens then? 23

A: I couldn't tell yah. That's not in

the process. I couldn't tell yah.

1	Q:	That's not in the process did you
2	say?	
3	A:	That's right.
4	Q:	Did I hear you correctly?
5	A:	That's right
6	Q:	Have you ever seen an allegation in
7	the Pennsylva	nia State Police, by anyone at any
8	level, were the	ere's an object of investigative fancy
9	or someone w	ho wanted someone investigated that
10	an adjudicati	on had been directed or had been
11	influenced by	the Front Office? Do you want me to
12	rephrase that	? Do you know what I'm asking?
13	A:	I'm searching my memory.
14	Q:	Mark before you respond
15	A:	Your saying that's a policy, and I
16	told her that,	of the library
17	Q:	Alright let me see if I can clean my
18	question up	then, a little bit
19	A:	Okay .
20	Q	You never indicated to Mrs. Claude
21	that as a pol	ice department or as a law
22	enforcement	policy you wanted her to gather street
23	addresses or	convert Post Office boxes addresses to
24		sses for your purposes as a Law
25		
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ı	A: That's correct
2	Q: You had also indicated I
3	believe thatStrike That! Let me go back to the
4	complaint. There's an allegation and a complaint
5	that certain individuals, in the complaint they're
6	non-Jewish individuals, paragraph 24. It says on
7	July 9, 2001 Karen Beckdul, his address is
8	Gettysburg College Box 101, and Andrew Dangle,
9	his address is Gettysburg College Box
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11	NOT INTELLIGIBLE
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14	Q: Okay sir
15	A: No, I can't say that I would
16	have specific knowledge about the Front Office
17	changing the adjudication that I can recall.
18	Q: Do you remember the
19	Stackhouse case?
20	A: Diana Stackhouse? I
21	remember that case.
22	Q: Is there any allegation at any
23	time that an adjudication had been influenced or
24	directed? And my second question to let you know
25	where I'm going Mark is; Did you ever reach a

I can only answer the way I've answered, Mr. Bailey. I told her " it was up to her". Q: Well it is a very important question. I'm gonna try again and maybe it's too complex. You never told her that as a police department you were interested in street addresses as opposed to post office boxes? A: No And you never asked her to do anything in order to replace post office box addresses with street addresses? Yes and I think it's important... A: Is the answer to that yes? Q: 13 The answer to that is yes. I'm 14 sorry. 15 That's all right Q: She called me about the issue. -----END OF SIDE ONE TAPE ONE-Q: I think you indicated that you didn't call her she called you. In response to one of my earlier questions you indicated it's not overly burdened among the police to get a street address for a post office box address if necessary. Correct?

1	conclusion in that case that whether there was an
2	allegation made that there had beengive us your
3	decree of certainly. Strong likely hood, likely hood,
4	or you felt certain that there had been an
5	adjudication effected in that case by Mr. Coury.
6	A: I believe, the Stackhouse case
7	was adjudicated by Colonel Coury. I recall Colonel
8	Westcott had wanted to do it, but he retired prior
9	to that investigation coming to a full stop.
10	Q: Did you ever confront Mr.
11	Coury with that issue?
12	A: No sir
13	Q: Did you ever ask him any
14	questions?
15	A: No sir. It would not have been
16	within my authority to do so.
17	Q: Now I know it may not have
18	been within your authority. It's probably not
19	within my authority either, but I could picture
20	myself asking him. My question is; did you ever
21	ask him or discuss it with him?
22	A: No I did not
23	Q: Have you ever discussed
24	Captain Ober with Mr. Coury?
25	A: Not that I can specifically

recall. I never had much of an opportunity to sit in

- 2 audience with Colonel Coury. I had two
- 3 individuals above me, in between me and that level
- of supervision.
- Q: Well no, I think I'm probably
- aware of that. The issue though, the question is
- whether or not you had the discussion. Had there
- been any discussion at all? It's not so much what's
- 9 in between.

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- A: I could not honestly answer
 one way or the other. I really I don't recall.
 - Q: Okay
 - A: I don't recall having a conversation.
- Q: No, if that's the correct answer it's fine. Now Mark I want to ask you some question about the LCE. At some point did you come to
- learn that Captain Ober had been transferred to a
- Lieutenant's position in LCE?
 - A: Yes
- Q: Do know whether or not Mr. Ober, 21 Captain Ober had filed a grievance?
- A: I believe he did, yes.
- Q: We've had numerous witness here who indicated that's what they of no circumstance,
 - some what thirty years of experience in the State
 - 4
- Q: Now I understand Mr. Campbell submits his retirement papers sometime around here May of 2000. Is that right?
- A: That sounds right.
- Q: What's a clean message? You
- 6 know the acronym C-L-E-A-N.
 - A: Commonwealth Law Enforcement
 Assistance Network. A CLEAN message is a
- 9 message that goes out to the command structure,
- in and it could cover almost any topic.
 - Q: Do you have a recollection of whether or not the position occupied by Ober as the Central Section Commander whether it was one of the positions listed?
 - A: Listed where sir?
- Q: It was not listed for vacancies forMay of 2000.
- A: If you're telling me that there's a routine CLEAN message that lists vacancies I'm not aware of that. I would not have had a reason
- to look at that document, if there was such a document.
 - Q: During the time that Ober was placed in the Lieutenant's position in LCE do you have a recollection on whether he had active

- Police, of a Captain being assigned to a
- 2 Lieutenant's position. So I want to ask you
- 3 because of your knowledge of the situation a litany
- 4 of fact questions here.
 - A: Okay
- Q: Did you at any time learn that the
- position in the LCE to which Captain Ober had
- 8 been assigned was in fact a Lieutenant's position?

A: To my knowledge it had always

- 10 been a Lieutenant's position.
 - Q: Did you...
- A: I was involved in the case that created that vacancy.
- A Or Abright sin

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- Q: Alright sir. I understand that. In the years that you worked with the Pennsylvania
- State Police do you know of other situations where
- 17 Captains where assigned to Lieutenants position?
- A: That specific example Captain to a
- A: That specific example Captain to a
- 19 Lieutenant's position?
 - Q: Yeah
 - A: No I don't.
- Q: Now, did you ever reach any...Do
- 23 you remember a Captain Campbell?
- A: Sure. You don't forget Al Campbell
- 25 once you meet him.

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- grievances and active court actions pending
- against the department?
 - A: Yes he did.
- Q: Did you become involved in any
- way in the decision or have any input in the
- 6 decision to restore Captain Ober to a Captain's
- 7 position?
- A: Formally, no.
- Q: Informally?
- A: Conversations with I believe it was
- Bill Mullen at the Governor's Office because of the
- 12 Labor Relation implications, and the active
- 13 grievances.

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- Q: Let me ask you about that Mark. I want to tax that mind of yours it's memory backs
- 16 that you referred to earlier.
 - A: They're faulty
 - Q: Well I don't know how faulty they
- 9 are. I have a tendency to think that the
- mechanism in there is very good. So I ask you to
- just take a moment back in your mind's eye.
 - A: Sure
 - Q: Do you ever offer the opinion or say
- to anybody "If this is done to Ober you mine as well
- write him a check." or words to that effect? OR

WORDS TO THAT EFFECT.

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A: The only conversation that I recall having concerning that particular action, and again that if memory serves me, it was that there was a Captain's spot available he should have just been slid into that position.

Q: It was an error not to do that? It could have dire consequences not to do that? I believe I may have shown the opinion that it wouldn't look well in light of the pending litigation.

Why did you feel that way Mark? O:

Because I believe that came second after the attempt to transfer Captain Ober to western Pennsylvania. Then there was the action that put him into Lieutenant Houston Williams' vacant position. There was a position available. There was active grievances. One of my roles is not simply to represent grievances, but to look at potential resolutions, and liability assessment. Certainly not to the extent of the Chief Counsel's Office, but from the labor arbitration stand point. I was of the opinion, it was shared, that it would be a way to resolve the grievance to put Captain Ober into the Captain's position that was there.

and not to question why at that time. Is that right? A: That's about it sir Q: I understand. In expressing these view point first of all you were doing your job. That was your duty and responsibility in a context of a labor negotiator. Isn't that correct?

A:

The client that you were serving it was your duty and responsibility to serve that client, and technically the client was the administration. Is that fair to say?

> Yes A:

You did that job and you did it Q: properly and decently. Isn't that fair to say? 15

I think that's fair to say, yeah.

I'm gonna change gears just a little 17 bit, and ask you a few other things here Mark. 18 You had indicated in response to an earlier 19 question that when you had gone to Colonel Hickes about some issue having do with a grievance filed 21 by Mr. Ober. That Mr. Hickes had indicated yes I 22 either gave those instruction or said that was okay 23 or prove something rather. I don't even remember 24 the details.

It's fair to say that you were of the opinion, you weren't saying any one was doing anything wrong, but you were very concerned with appearances? Well sure A: Right. That's your job. O: Yes A: In order for you to properly serve Q: your master at that time to do your job that was a duty and responsibility of you to look at those situations and say "Hey, I'm not here grinding any personal acts. I'm not saying anyone else is grinding any personal act, but I'm saying an objective analysis of this thing, this could create problems." It's that fair to say? Yes, and I believe I shared that opinion with Linda Bonney, Director of Personell. 17 And what did Linda say to you sir? I believe her comment was to stay 19 away for it. 20 Q: Did Linda say why she felt you 21 should stay away for it? 22 No sir. I did not question her

It was your duty but to do or die,

about it.

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Okay A: Isn't that fair to say? That there 0: was something of that sort there. There was a conversation between Lieutenant Colonel Hickes and myself, yes. Q: To prove that you talked Colonel Hickes did you have any knowledge of any rumor or background which would indicate that there was some kind of a personal feud or problem, political problem if you will, between Colonel Hickes and Colonel Evanko? 63 Α: 12 For years I've heard these rumors. `-13 I mean I've been involved in politics a little bit myself, and what not. I heard these different things. Is it fair to say, for whatever value it may

Okay, but there was a difficulty 23 right? 24

Yes A:

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have or may not have, that the rumor bill for year

that there had been some type of turf battle or

difficulty between Mr. Hickes and Mr. Evanko?

was some difficulty between the two of them. I

didn't hear anything specific about a turf battle.

A: What I had heard was that there

Q: Did you ever hear the Mr. Evanko attempted to have Mr. Hickes removed as a Deputy after the, I don't know how to call it the Ober incident. I maybe should call it the FBI incident, but whatever you'd call it. The matter where Mr. Ober had been approached by the FBI and then reported that at a later date to Mr. Evanko. Did you ever hear that Mr. Evanko had wanted to get rid of Mr. Hickes over that?

A: No I didn't hear that.

Q: Now, disciplinary process in the

Pennsylvania State Police. Based testimony you

already provided we understand that process starts

with an investigation of misconduct.

A: Um-mum

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 $\label{eq:Q:My understand} \mbox{ Q: } \mbox{ My understand is it includes } \\ \mbox{ what's called a}$

Pre-disciplinary Conference?

A: Yes

O: How does that work?

A: Once the general investigative report is received by the Commanding Officer from the Bureau of Professional Responsibility

verification is provided to the member that they

had up to three day to arrange to met with the

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anyone else. He would have to make contact with the Bureau of Professional Responsibility and file that complaint.

Q: I'd like to talk with Mr. Ober for just a couple of minutes before we continue.

A: Sure

Q: We're just gonna step out of a second. No you don't have to, well if you want to shut things down, but we're only gonna be a

minute I think. Is that okay or do you want me to

11 shut down?

JOANNA REYNOLDS: No that's

13 fine.

14

25

Q: We'll only be thirty seconds.

15 Be aware that things running here.

MR BAILEY: You know what? This recorder is still running. Okay let's go back on the record. Do you have any questions?

JOANNA REYNOLDS: I might have

20 one later on.

MR BAILEY: Ladies and gentlemen
we're back on the record. It's about 3:00 p.m., go
ahead. Why don't you just mark the time on that
machine.

CRYSTAL LYDE: Okay, it's 2:59 p.m.

Commanding Officer to respond to the allegations

2 contained with in the investigative report. During

3 which time they have the right to attain union

4 representation. They're also given an opportunity

to provide a responds in writing if they so chose.

6 That meeting if it is requested constitutes the Pre-

disciplinary Conference.

Q: I can't say that there was a

9 complaint. Excluding Captain Ober' do you know

10 of complaints or investigations launched by the

Commissioner into an action or alleged action or

misconduct, call it what you will, of a Pennsylvania

3 State Police Officer at the rank of Captain or

14 above?

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20

A: Do I personally know of an

6 incident? No, I do not know of an incident.

17 However there would certainly be within the

8 Commissioner's authority to request an

investigation be conducted.

Q: No doubt about that. I don't

21 think, it's probably within my authority to request

22 an investigation be conducted. How does the

23 Commissioner go about requesting that an

24 investigation be conducted?

A: I would assume just like

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We are back on record.

MR BAILEY: You know Mark I very

much appreciate you coming here today. I'm

4 grateful to you. I don't have any other questions at

this time. The opposing counsel may have some

6 questions.

MR GRAB: Okay

JOANNA REYNOLDS: It's just a

9 clarification question here.

MR GRAB: Sure

Q: You indicated that to get to the

financial reimbursement board that there had to

be a meeting of a group of people first. Is that

14 correct?

15

20

A: In Captain Ober's case?

Q: Yeah, well in order to get to the

three member reimbursement board that made the

determination in the case as to whether or not he

would get reimbursement for certain things

A: Um-hum

Q: Regarding the grievance that was

filed. You said that, I think it was the Grievance

23 Board, had to meet and you said it was a ten-

24 member board.

A: The Grievance Committee. PSTA

Grievance Committee it's called

Q: Okay, and they all had to vote.

You said they voted unanimously to send it to the
Financial Reimbursement Board.

A: It's not a hand vote Joanna, but we set around the table much like this and we discuss each case that the PSTA put on the docket for each month. We could have five cases. We could have fifty cases, but we discuss the matters of each case. What is discussed it is agreed that what is discussed stays within that room. That is an agreement between the Commonwealth and the association, except the particular outcome of our 13 actions. That's not something that's deemed to be confidential. The PSTA Committee decided that at 15 that point that that issue was best heard in front of 16 the Reimbursement Compensation Panel. 17

Q: Once that decision is made do you convey that information to anyone? In other words, do you make anyone aware in the administration that that issue is going to go to the Reimbursement Board?

A: Sure. I would let my immediate supervisor be aware of that and I would let our clerical assistant be aware of it because she's the

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Q: Okay

A: When I received the grievance my job is to investigate and respond to grievances.

Q: So this is before it went to the Grievance Board?

A: My discussion with Colonel

Hickes?

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Q: Yes

A: It was before the meeting with the ten-member PSTA Grievance Committee, yes.

Q: And that information that you collect, would that also go in the packet over to the Financial Reimbursement Board to consider?

A: The information that comes in with the grievance, yeah. But realize we don't normally get those as grievances.

Q: Okay. What I'm trying to get at is there was no testimony put on before the Financial Reimbursement Board was there?

A: No I believe I stayed at that.

Q: So they would rely on any information they received including the information that you provided in the interview with Colonal Hickes?

A: Yes

one would then schedule the meeting.

Q: Then how are the members...When
you say your "immediate supervisor" you're talking
about Linda Bonney?

A: Well my immediate supervisor, I
believe, at the time was a Brenda Estep, but
because Brenda had no prior experience in the
field of Labor Relations Linda Bonney had advised
me to deal with grievance issues, discipline issues,
and Labor Relations philosophical discussions with
her. Until such time as Ms. Estep could get up to
speed. So yeah in this particular case it would
have been Ms. Bonney.

Q: Okay so you would have reported the fact that this was going to the Reimbursement Board to Ms. Bonney?

A: Yes

Q: And then after that you just what?You had to gather information for the

Reimbursement Board or?

A: No I had to take...

Q: Why did you go to Colonel Hickes

23 then?

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21

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A: I did that before I went to the

25 board.

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Q: Okay. That's all the information I needed.

MR BAILEY: I never impeach my ownwitnesses. I'd like to thank you.

5 CRYSTAL LYDE: It's 3:03 p.m. The 6 deposition of Mark Grab is completed. Thank you.

INDEX

abuse of the authority, 23 adjudication, 20, 29, 33 administration, 43, 48 allegations, 10, 15, 30, 45 appeat board, 12 AR-425, 25, 30 arbitration, 5, 19, 41

Bonney, 12, 13, 49 BPR, 32, 33 Brenda, 49 Bureau Director, 29 Bureau of Labor Relations, 5, 16 Bureau of Professional Responsibility, 28, 30, 31, 32, 33, 45, 46

Campboll, 2, 39 CBA, 25 Chief Counsel, 1, 3, 9, 12 Claude, 34 CLEAN, 39 Collective Bargaining, 22, Collective Bargaining, 22, 23, 24 Commanding Officer, 29, 45 Commissioner, 28, 30, 33, 45, 46 Commonwealth, 5, 10, 11, 39, 48 compolaint, 28, 31, 32, 35 35, 48 complaint, 28, 31, 33, 35, 45, 46 45, 46 complaint and processing worksheet, 31 Conley, 2 Constitutional violation, Coury, 2, 9, 12, 13, 28, 36, 37

Christi, 1, 3, 13 Deputy, 9, 11, 14, 26, 28, Deputy Commissioner, 9, 11, 14, 28 disciplinary action, 19, 23, 24, 25, 28, 29 disciplinary officer, 26 disciplinary process, 44 disciplinary process, 44 disciplinary reasons, 8, 19 due process, 19, 20, 21, 23

Edwards, 17 Estep, 49 Evanko, 2, 28, 44 experience, 3, 6, 18, 19, 20, 22, 23, 28, 38, 45, 49

FBI, 15, 44 Front Office, 33, 35

Governor's Office, 5, 16, Governor's Office, 3, 16, 17, 40 grievance, 8, 10, 12, 15, 21, 38, 41, 43, 48, 49, 50 grievances, 6, 9, 10, 18, 20, 24, 25, 40, 41, 50

Hickes, 11, 15, 16, 43, 44, 49, 50

investigation, 10, 14, 15, 29, 32, 36, 45, 46

job selling, 15

labor negotiator, 21, 23, labor negotiator, 21, 23, 42
Labor Relations, 5, 6, 7, 16, 22, 23, 49
Labor Relations
Coordinator, 5, 6
lawsuit, 5, 6, 9
LCE, 37, 38, 40 Licutenant's position, 37, 38, 40 Linda, 12, 13, 42, 49 Linda Bonney, 12, 13, 42, 49 49
Lost Damage
Reimbursement
Compensation Appeal
Panel, 10

Document 65

misconduct, 19, 32, 45 Mullin, 16

Ober, 2, 3, 5, 6, 7, 8, 9, 10, 14, 15, 25, 26, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47 objection, 20, 21, 22

Peacock, 27
penalty box, 24, 25, 26
Pennsylvania State Police, 3, 5, 6, 7, 8, 12, 15, 16, 18, 19, 20, 23, 24, 25, 28, 32, 33, 33, 44, 45
Pennsylvania State
Trooper's Association, 17
Pre-disciplinary
Conference, 45
PSTA, 10, 12, 16, 48, 50
PSTA, Grievance Board, 10
PSTA Grievance

10 PSTA Grievance Committee, 10, 12, 16, 48, 50

reimbursement, 9, 10, 11, 15, 47 Reimbursement Board, 48, Reimbursement Board, 4t 49, 50 Reimbursement Compensation Appeal Panel, 25 Reynolds, 1, 3, 13

Stackhouse, 36 State Police, 5, 18, 19, 22, 23, 24, 25, 28, 30, 38, 45 street addresses, 34

the department, 9, 13, 14, 15, 17, 26, 27, 30, 32, 40 transfer, 7, 8, 9, 19, 24, 25, 41 Troop Commander, 29

union representation, 29,

violation, 23, 24, 25, 29, 31, 32, 33

Washington, 7, 17, 25 Westcott, 2, 28, 36 western Pennsylvania, 41 Williams, 26, 27

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IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT

DARRELL G OBER

: 1: CV- 01-0084

Plaintiff

VS.

PAUL EVANKO, MARK CAMPBELL, THOMAS COURY, AND HAWTHORNE CONLEY

Defendants

DATE:

April 10, 2002

PROCEEDINGS:

Video Deposition of

Mary Bungo

APPEARANCES:

For the Plaintiff: Donald Bailey, Esquire 4311 N. 6th Street

Harrisburg, PA 17110

For the Defendant: Barbara Christi

Joanna Reynolds

1800 Elmerton Ave.

Harrisburg, PA 17110

Elmerton Avenue, Harrisburg, PA. 17110. Office phone number is 717-783-5568.

2 JOANNA REYNOLDS: I'm an Assistant 3

Counsel with the State Police representing the defendants in

this matter. My address and phone number are those given

by the Chief Counsel. 6 7

RODRIGUEZ: Very well you may begin.

BAILEY: Any particular way you want me to 8

9 address you.

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BUNGO: Whatever you feel comfortable 10

11 with. Mary is fine

MR BAILEY: Give us if you would please just

a description of the duties you perform let's say in a given 13

week for Commissioner Evanko, indecently who is present 14

with us today. 15

MARY BUNGO: Well of course general 16 secretarial duties that would be related to any secretarial 17 position but beyond that I receive any document from outside 18

and within the department that would have his name on, 19

either addressed to him or would require his signature. I 20 maintain his schedule for him. I do some authoring for him.

I edit correspondence for him as required. I of course handle 22

phone calls things of that nature. Deal with individuals both 23

within and outside the department at various levels and pretty 24

much act as the general assistant to him and as required as

lay Bungo

ALBERT RODRIGUEZ: Good morning ladies and gentlemen. Please let me advise you again that video are in operation. Today's date is April 10, 2002. The time now is 11:43 a.m. My name is Albert Rodriguez. My address is 4146 Spruce Park, Lebanon, PA 17046. I have been hired by P.R. Video to take this video deposition for the plaintiff. This case is in the United States Court for the Middle District of Pennsylvania. It is docketed at number 1-CD: 01-0084. Caption is Darrell G. Ober versus Evanko et.al. The deponee is Mary Bungo. Ms. Bungo, please raise your right hand. Do you understand this is a legal proceeding and do you swear to 11 truthfully answer the questions asked of you? 12 BUNGO: Yes I do. 13 ALBERT RODRIGUEZ: Would counsel please 14 identify themselves and provide their address and phone 15 number for the record 16 MR BAILEY: Yes sir, my name is Don Bailey. 17 I represent the plaintiff in this matter, Darrell G. Ober. My 18 address is 4311 North 6th Street, Harrisburg, Pennsylvania, 19 17110. My phone number is (717) 221-9500. My fax number 20 is (717) 221-9600. 21 BARBARA CHRISTI: Chief Counsel of the 22 Pennsylvania State Police I represent the Pennsylvania State 23

I'm directed to do something of for instance like author a document for him letter of condolences or something of that Q: Do you make policy decisions for the

Police defendants in this matter. My office address is 1800

Pennsylvania State Police?

A: Absolutely not.

Q Do you make decisions about the practices in the Pennsylvania State Police on behalf of Commissioner 9 Evanko?

A: No.

Q: Is there any written form of delegation of 11 duties. In other words delegation of power or duty that 12 Commissioner Evanko has given you. Has he ever given you 13 express instruction on what you are authorized to do for him? 14

A: Well at some point after I began working for 15 Colonel Evanko when we had established a relationship at

one point he realized that my nearly thirty years of 17 experience would enable him to give me certain latitudes. He

then advised me that I would be able to autopen certain 19

documents providing the deputies had reviewed them. I only do that after they have been reviewed by enlisted members. I

do not do that unless they pass thru a chain of command into

an order of process. I autopen a lot of correspondence for

him but that's letters. Those were generic type letter that go

out to perhaps senators or legislatures individuals in the public.

Q: One of the issues in this case as you may know is the autopen of certain letters having to do, excuse me of certain changes in AR 1, which is the major TO&E, table of organizational equipment or table of organization rather regulation that is utilized by the department. Are you familiar with AR 1?

A: I am.

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Q: When Colonel Evanko was here testifying, he was very emphatic and very firm as I remember it that he had no knowledge of sub-section C this change, which is a material issue in this case. He had no knowledge of it being added to the AR. Did you ever discuss sub-section C with Colnial Evanko?

14 Colnial Evanko? 15 A: No I don't even know what it relates to and I 16 can testify that I don't believe he even saw that 17 administrative regulation until it was autopen and sent 18 because it had passed thru the three deputies. And I rely very 19 heavily upon their initials or the fact that they have reviewed 20 the document before I would autopen it. In particular 21 Colonel Hickes and Major Merryman because all of the 22 directives that are written for the department, the bible so to 23 speak, are written within the Bureau of Research and 24 development and his staff of that bureau. So when I see 25

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he relies very heavily on his deputies to handle those sorts of

things in his absence. 2 Q: Hadn't he, wasn't he, didn't he have Colonel 3 Hickes investigated over this matter having to do with Captain Ober though? You are relying on very heavily on this major change you are telling us. 6 A: I'm not familiar with the major change. I 7 actually don't know what major change you are referring to. Q: Sub section C? 9 A: I have no idea what that says. 10 O: So you autopen Colonel Evanko signature to 11 changes necessary for the accreditation process. You're 12 telling us...that's your testimony now. 13 A: Yes. 14 MR BAILEY: Without the Colonel seeing or 15 approving or hearing about it based upon an apparent 16 approval. Based on the initials on this document. By the 17 three deputies. 18 MARY BUNGO: And the staff and research 19 and development. And that particular document is staffed 20 out to the different entities within the department for their 21 22 input. Q: Like the lawyers, did the lawyers look at it? 23 A: I don't, I can't speak to that. They may 24

have. But to the different bureau's and different troops and I

	to a tax's Lorentz in the
1	Major Merryman initials and Colonel Hickes who is the
2	deputy of staff than I am very confident that I can autopen
3	because that they reviewed it because that is there shop so to
4	speak. I don't believe Colonel Evanko saw AR I at all
5	because as I recall he was involved in budged preparations
6	and it was an issue to have that moved along because the
7	department was preparing for a colean inspection. And if
8	passed thru so many many different individuals before it hit
9	my desk.
10	MR BAILEY: Well we know that the deputies,
11	the different deputies we all know what they thought about it
12	but they certainly initialed having reviewed it.
13	MARY BUNGO: that indicates that they are in
14	agreement with it.
15	MR BAILEY: It does?
16	MARY BUNGO: Yes. If there would be any
17	changes that they would care to make they would make that
18	thru the processtheir changes or revisions on it. Or any
19	document that would come thru.
20	MR BAILEY: OK. But these are changes to
21	AR 1 and you autopen it. You don't know whether, in fact
22	you 're telling us that of your knowledge that you know that
23	Colonel Evanko didn't even see it?
24	A: I don't think he saw it until after he signed it
25	because I had autopen it and the deputies had reviewed it. So

1	can speak to that because when I had worked in the year
2	previously I had remember portions of that document in
3	previous years being sent to the bureau of operations. Where
4	those individuals will look at the part that applies to their
5	function. And approve that. So many many many
6	individuals within the department had seen that document
7	before it came to my desk.
8	MR BALEY: Yes but Mary you just told us a
9	couple of minutes ago here that you don't know if that sub
0	section C was about. You didn't even, all you saw was the
1	document which
12	MARY BUNGO: That other people had
13	reviewed.
14	MR BAILY: Yes the three Colonels had
15	MARY BUNGO: Well I know besides the three
16	Colonels had
17	MR BAILY: How do you know there were
18	others besides the three Colonels?
19	A: Because it was initialed. Because executive
20	officersit passed thru executive officers hands. In the case
21	of certain deputies it passed thru secretarial hands, it was
22	staffed in research and development.
23	Q: OK then how do you know all this?

A: Because the initials were on there then I can
make the determination that the appropriate people had
reviewed the document.

Q: When is a...I mean, is this the way Colonel Evanko's policy on dealing with organizational changes in the state police that effect major regulations. Did you do this all the time? Did you ever check with him?

A: I think you would have to ask him that question, but...

MR BAILY: I did.

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goes.

MARY BUNGO: There are times when he does review and sign documents. That particular 1 autopen. But he does rely very heavily on his deputies in his absence to insure that proper procedures are followed and so I do that as well.

Q: So when you affixed it did you, when you autopen this change sheet, did you have a copy there of the changes, did you have them there with you?

A: When I autopen it, it was a completed document. It had processed thru the staffing process. It had returned to the bureau of research and development. It was typed and final. When it came to me it was the final document that required a signature. So I did not review it a second time nor would have I remembered a lot of the context.

MARY BUNGO: I saw it in draft form when it had been staffed thru the research and development passed 2 thru the deputies. When some notations had been made. 3 Then I looked at it and read it myself...only for what might 4 have been glaring errors or typographical errors. I did not review for policy or content. 6 MR BAILY: I mean no disrespect but you are probably ten times better than I am at grammar spelling thing 8 and I make arrows like that all the time. And somebody with your skill and your ability that work at your level you have 10 folks out there that can proof read and even computers these 11 days that check on certainly spelling and sometimes even 12 grammatical errors, right? When you are doing that kind of, 13 that's not what your hired and that's not what you do for the 14 commissioner is it? That's a work habit of yours. You're 15 probably highly skilled and you check it for that. But you are 16 telling us that you're going to review and that major revisions 17 to an AR. At the Colonel's level for spelling and 18 grammatical errors mam...is that what you are telling us? 19 A: Yes. 20 21 Q: You do? A: Yes I do. Because anything with his 22 signature applied on it was my responsibility to insure that it 23 is an appropriate document as far as grammar or punctuation 24

Q: Did you set it aside, did you give the Colonel a not and say you need to look at this or double check this or anything? A: I don't recall that I did. MR BAILEY: So a major change required for accreditation, and I know from past work I've done how 6 important it is to Colonel Evanko, this accreditation process. 7 You autopen the approval of these changes based on the 8 initials of the deputy commissioners. The three Lieutenant Colonels. Is that right? 10 A: I autopen it based on the review of the 11 deputy commissioners and any other individual that had 12 reviewed it and signed off on it. Which is an indication to 13 me that they are in approval of it. If they had not been they 14 would have made their intent known and it would have been 15 returned to the bureau of research and development and 16 changes would have been made by the staff there. So when it 17 came to me it was the finished product. 18 Q: Do you know when, did you look up any of 19 the history of this document as to when it was changed, had 20 been reviewed or evaluated? 21 A: I saw it when it first come thru in draft form. 22 What do you mean by the history of it? 23

MR BAILEY: What draft form did you see?

24

O: But not policy?

A: But I do not, No. No. And actually most of the directives I never make revisions to because they are staffed in research and development. The documents that I might revise or edit would be personal correspondence or business letters that come up. O: Yes Mam, but we are talking about this AR.

We're talking about a litany of changes that have to do with personnel that have been presented to us you witnesses here in this case as this very significant need to get this document in shape for accreditation. How often does the, what's it called colea?

A: Accreditation is colea, every three years. I 13 14 believe.

15 MR BAILEY: Well you know it is fascinating. I went in and looked at the historic file. I use to be auditor 16 general. We used to audit some of you folks function over 17 here. And I'm very familiar with this thing about this 18

accreditation process. I remember it quite well. Because it reflex certain kinds of audit functions. But you know the last

time that AR I - One, according to my research had been

22 changed was 1997. Where there any complaints from the folks that do the compliance auditing for the accreditation 23

agency about the status of AR 1 as of ninety seven, ninety

eight, three years ago would have been nineteen ninety eig	ht.
Do you know if there were any existing complaints?	

A: I don't.

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Q: But you were concerned about that right.

About the accreditation coming up?

A: I wasn't.

O: You weren't.

A: No I wasn't. I wasn't.

Q: You weren't because you know that the Pennsylvania State Police as an organizationally is a fine agency and is a superb police department, correct?

A: Without a doubt.

Q: Mam, I agree with you. But I'm having a real hard time fitten in this need for accreditation and these changes. Let me tell you why I am and let me ask you more specific question. And maybe you can help dispel my confusion and my problems, OK? When I looked at the project summary, the project-tracking summary, and I'm making reference to an exhibit that is in this case, McAlreavy One. Are you familiar with the project tracking summary?

A: Not really. I imagine that's under the bureau of research and development.

Q: It is Mam. It's like a history of the different things that happen. It's right here you can look at it, your attorneys have seen it, they know what it is. Now I had

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we couldn't find any. But is says here, I'm sure they're there
I may not be able to read them or something. Here's
February twelfth two thousand one receive back for
corrections. Now did you play a role in sending it back for
like for grammatical or spelling errors?

MARY BUNGO: Received back from where?

MARY BUNGO: Received back from where:
From the executive offices?
MR BAILEY: Well, let me explain, I think the

next entry explains it. The next entry says resubmitted to front office. Which indicates that it had been in the front office. OK, all this accruing after Mr. Ober's lawsuit was filed. OK, received back for corrections resubmitted to front office. Do you know anything about that?

13 A: I would assume that that implies, or refers to 14 when it had been staffed thru the front office, to the deputies, 15 to the executive officers and myself, and I do recall one error 16 though I did not locate it in the document. It was the 17 executive service section had been transferred under another 18 deputy. And I indicated that by doing it on a post-it I 19 believe. It was passed thru the deputies back thru the 20 research and development and then it would have been put in 21 the final version. Which I assume that is what that is 22 referring to. After it would have been sent to the executive 23 offices it would have been returned to the bureau of research 24

noted, and I questioned Mr. McAlreavy, and I had noted that there is a, back in October twentieth, a lot of personnel changes to AR 1. In other words changes about titles and positions, that sort of thing. Mr. McAlreavy had indicated that it wasn't in compliance, it didn't match. That AR 1 did not match what was happening in the department. There needs to be changes. He seems very reasonable to me and he certainly has some notes down there about some of those things. And here is an entry, it's October twentieth at twelve fifty pm where this thing was submitted to Pam. And then 10 the next entry is January nineteenth two thousand one ten thirty five, I'm going to assume that's AM. Ten thirty-five 12 hours would be AM. resubmitted to Sharon. Sharon is going to explain this to somebody over there in R and D, OK. 14 MARY BUNGO: Yes, that's an internal bureau 15

MARY BUNGO: Yes, that's an internal bureau function. I have no knowledge of that.

MR BAILEY: No Mam, I don't think you do.

Do you know when Mr. Ober's lawsuit was filed?

A: No.

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18

19

22

Q: Did you know where it was filed on Januarysixteenth two thousand and one?

A: No.

Q: Now it says here, February twelfth two
 thousand and one, see we looked at the historic file and we
 couldn't find to many documents to explain this to us, in fact

13

and development to be put into final form. To be returned again for signature.

MR BAILEY: Now Mary, what you are telling us about is that you found a section....

MARY BUNGO: No, No, No I believe I found a statement on the first page. Listed under the deputy commissioner of administration. This was one of the actually about the only error that I located. It said that the executive service section, which are the bodyguards of accu protection. Were under the deputy commissioner of administration. That position had changed and that function was moved under the 11 deputy commissioner of operations. So that was an error that I found. And that probably is why it is important to you that even at my level that I continue to review this sort of thing. And so it went and that is one of the notations I made. I even 15 went to as I recall to Lieutenant Alou and brought that to his attention so that he would see what I had seen so that I would 17 not be making changes. Because I am very very personally 18 aware of the importance of directives and policy that the 19 department operates by. And at my level I do not do those 20

21 sorts of things. That's staffed by enlisted members.

22 MR BAILEY: OK, well you know you turned a

23 page in my mind because I'm going back to the questions

24 that we had of previous witnesses, and that is what I meant

25 about whether it's a section or whatever. This duty was

A: No.

•	

1	assigned it should have been in operations which is Colonel
2	Coury is big on operations right?
3	A: He washe was at that time.
4	MR BAILEY: He was at that time. And that
5	particular function was missed placed in the document. It
6	was a duty and a very important function on this personal
7	security or bodyguard function that you refer to. Should not
8	have under the deputy in charge of administration and should
9.	have been under the deputy in charge of operations. Now,
10	was that a change from AR 1 - One as it existed in July of
11	nineteen ninety-seven?
12	A: I would think so.
13	MR BAILEY: Well, do you remember? You
14	caught that is that one of those personnel functions? Did
15	personnel put that in there or did R and D?
16	A: I have no idea.
17	MR BAILY: OK.
18	MARY BUNGO: You know I wasn't with
19	Colonel Evanko in nineteen ninety-seven.
20	MR BALEY: OK.
21	MARY BUNGO: So I would not have seen it
22	when it wasI would not have been I would not have any
23	unprevail One One in nineteen ninety-seven.
24	a a didn't review this regulation, as it
25	existed before you saw this draft?

1	of AR 1 - One and you made a recommended change in it.
2	You told us it was a draft copy you saw?
3	A: On the draft.
4	MR BAILEY: Yes Mam, and it sounds to me,
5	like you made this recommended change and it's obvious that
6	it sounds like good advise to me, with what little I know
7	MARY BUNGO: It was incorrect.
8	MR BAILEY: It was in error and they corrected
9	it. So the next draft that you saw which you auto penned for
10	the commissioner, that had been corrected wasn't it Mary?
11	A: Yes.
12	Q: Because you were looking for it, right Mary.
13	A: Yes.
14	Q: Yes Mam. And they corrected it, isn't that
15	correct.
16	A: Yes.
17	Q: OK. So you don't know what should be in
18	the historic file, so you don't know why that draft isn't there
19	do you?
20	A: No.
21	Q: All right. Now Mary when did sub section
22	C, this may be an unfair question. By the way, if you don't
23	
24	your knowledge. Not knowing is clearly the proper answer.
24	When did sub section C first appear in the draft that you saw

,	Q: They didn't send over to you or to the good
	Colonel, they did not send a copy of AR 1 - One as it existed
, 1	before the proposed changes. You just read the proposed
5	changes. That's all you saw.
6	A: I saw complete document, it may have been
7	the same document from nineteen ninety-seven. It may have
8	had changes incorporated but I don't know. That was the
9	document that was processed thru for completion and that
0	was the document that would have been finalized. I don't
1	know how that was created because that is within the bureau
12	of research and development. Major Merryman's bureau.
13	Q: Did you make notes on there, that this needs
14	to be changed that this provision needs to be under there that
15	it's wrong. And they made those changes?
16	A: Yes.
17	Q: That draft should be in historic file,
18	shouldn't it?
19	A: I have no idea, No, I can't respond to that. I
20	don't know how they maintain historical file. I don't have a
21	historical file. That would be within the bureau of research
22	and development.
23	DATE CV. Vee I know. I went over and
24	not the really enrious because you got a copy

1	A: The draft that I saw was the complete
2	document.
3	Q: The last one?
4	A: No. The first one. The draft. The draft was
5	a complete document for review. I assume it was in that I
6	really don't, I'm not familiar with sub section C or what it
7	relates to.
8	Q: How many change orders did you sign for
.9	the Colonel on February twenty third two thousand and one?
10	MARY BUNGO: How many?
11	MR BAILEY: Yes Mam.
12	A: I'm not certain.
13	Q: You're not certain?
14	A: No.
15	Q: Did you sign more than one change order for
16	AR 1 - One on February twenty third thousand one?
17	A: I'm not certain. I know I signed one. But
18	I'm not certain I signed more that one. I have no recollection
. 19	of that.
20	Q: Well how many drafts did you see on
21	February twenty third two thousand one?
22	A: I didn't see a draft. Is that the date it was
23	
24	MR BAILEY: Yes Mam. I'll show it to you.

MARY BUNGO: It would not have been a draft. I would only autopen a completed document. Q: A completed document? 3 A: Yes, ready to be copied.

Q: OK. No problem. Mam I would like to show you copies of two documents here one of them is marked McAlreavy number four and the other one is marked McAireavy number five. Would you please look at those for me Mary?

A: Certainly.

Q: Thank you. All right. Mr. McAlreavy tells us that this document without a signature is prepared in advance. And my understanding was that it is appended to the final document. So the Colonels signature can appear and is taken over for repo or what ever. Is that correct Mam?

A: As far as I know it would be.

Q: All right. Could you explain these two 17 documents for me? And do you know which one you auto 18 19

A: They both look like they have been autopen

to me. 21

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Q: Let me represent to you that I did see the documents in the historic file and they appear to be auto penned to me, the same way. These are just copies. They are not as good as the original.

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A: Yes because sometimes the sequence of events another document might be dated and given a number. They don't necessarily run in sequence is my understanding. Q: Here's what struck me. Mr. Mcarveary testified that he came over to you personally. 5 A: Yes he did. 6 Q: And that you signed...you autopen this 7 change...one of these change orders. We don't know which one obviously. For Mr. Evanko. 9 A: Yes. 10 Q: 'He had recollection of seeing another one or 11 another copy. I am asking you if you had signed two and if 12 so why that would be. There are other changes; there are 13 other differences on the documents. If you will notice under 14 instructions insert these pages...one says one thru sixty-six 15 one thru sixty-eight. I'm not indicating any significance to 16 this. I'm trying to learn what this is about if you can help 17 me? 18 A: I can't. 19 20 Q: You can't. A: No. 21 Q: You see I can't conceive after listening to 22 somebody with your intelligence and skill it is little hard for 23

me to believe that you would sign two change orders on a

A: I understand that. It appears to me that...number five is a different type print. Maybe a darker print. 3 MR BAILEY: Yes I agree with you. It's different. MARY BUNGO: Different font possibly. MR BAILEY: I agree. 7 MARY BUNGO: What was your question? Q: On February twenty third with the 9 documents that we have looked at, under testimony that 10 we've had. February twenty third might be the wrong date. 11 Might be the twenty-second. Here is a document that 12 indicates that...this is McAlreavy number two. And that has 13 February twenty second...there may be a day or two 14 difference. We don't know but the change appears to be have 15 signed on the, and we don't know if that has any significance 16 and it probably doesn't. The one thing that we do know is 17 that there was signature autopen on February twenty third 18 two thousand one. Or at least a piece of paper that says that. 19 A: I could be wrong with, about this but; I think 20 some times a date might be placed on a document after. 21 Q: Mr. Mcarveary may have indicated that the 22 date does get placed on afterwards.

final document and not know it. I can't picture you doing that. 2 A: It's conceivable that I may have because in my daily schedule this would not have been a huge issue. So I may have signed two I may have signed other documents that day and to try to recall a year or more ago what...if I would have signed two I don't ... Q: You remember a year a ago you remember 8 corporal came over to have it signed...you remember that. A: I do. 10 Q: You are very quick in your response. Obviously you have instant recall. But you don't remember 12 if you signed a second one. Such a document, accreditation, the Colonels authority. I'm not trying to talk down to you. It 14 seems to me that you would understand... remember that. And I don't understand why you don't remember that. 16 A: Probably because I would have put my faith 17 in this process that this follows thru. Again I would have to fall back to the bureau itself. The bureau of research and 19 development under Major Merryman's command. And the deputies. I would have to fall back on that because I have no 21 reason to miss trust that I wouldn't be...shouldn't sign these sorts of things. I put a lot of faith in the people that I work 23 with in the other bureaus.

	Q: You have to in a big organizationor you
2	can't functionright?
3	A: That's right.
\$	Q: OK.
5	A: This looks possible that this could be a
6	different font its very very possible that the corporal may
7	have brought this back to me. My secretarial skills tell me
8	that this is a different font than this AR
9	APPOSING COUNSEL: It just indicates Mary,
0	when you say this may be a different font you are referring to
1	which exhibit number? McAlreavy five.
2	MARY BUNGO: Five.
3	MR BAILEY: Now you're talking a difference
4	between McAlreavy five and four?
15	A: Yes. It appears to me that that is a different
16	size font or by font I mean print type or print.
17	MR BAILEY: Right.
18	MARY BUNGO: So it is possible that I find
19	those.
20	MR BAILEY: Sure, Mary
21	MARY BUNGO: It would have been me.
22	MR BAILEY: Who else has the AutoCAD? I
23	mean that is an autopen signature apparently. I think the
24	
25	autopen signature is it ball point fiber point what is it?

i	Q: OK. Now Mary on the issue of authority.
2	You explained as I understand it you got a document like this
3	here on these changes here things that you would look for as
4	an indication that it's a reliable situation that you could sign
5	the Colonel's signature. You've got the three deputies
6	signing off on it no comments indicating that they approve.
7	So you fell relatively safe that there is not going to be a
8	problem here if I sign this. The Colonel, if he reviews it or if
9	he gets a chance to review it is going to approve it based on
0	everybody looking at this and having sufficient review and
1	endorsement processes that it is reliable and you can go
2	ahead and do it without checking with him personally?
3	MARY BUNGO: Are you speaking of all
4	directives? Or just
5	MR BAILEY: No, I'm really talking about this
6	particular thing. In this case because of the deputy
17	signing off on it etcthat you felt that it was safe to do
8 1	this?
19	A: Yes.
20	Q: OK, and that you felt that you didn't have to
21	wait to personally consult with the commissioner on this and
22	I assume that is because of his workload. Is that fair to say?
23	A: That would be fair to say. This time in
24	February usually it's an annual procedure that he is preparing
25	for the budget. Which always takes place in March. My

1	A: Actually its just standard basic pen comes
2	from central supply. Nothing fancy.
3	Q: I use to have one. Is it like ballpoint? Does
4	it go in blue go in black?
5	A: It is always black.
6	Q: Always blackand is it like one of these
7	A: It could be it's basically that type.
8	Actually it can very. Sometimes we use that type sometimes
9	we'll use the fiber tip. If we don't have that or it doesn't
10	seem to be serving the purpose.
11	Q: We use a ballpoint I understand what you
12	are saying. Do you have trouble with the ink drying on these
13	things?
14	A: No.
15	Q: No, didn't you have your documents smear
16	up because the ink didn't dry up for a year?
17	MARY BUNGO: Because the ink didn't dry for
18	a year?
19	MR BAILEY: Yes
20	MARY BUNGO: I would think not.
21	Q: Did you have trouble in your office doing
22	things for Colonel Evanko where the documents get smeared
23	up and smear other documents because the autopen signature
24	0
25	

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recollection is that is what he would be involved in at that time. Because I believe it was March sixth perhaps that year. 2 Q: You were rushed to get this thing done? 3 This AR 1 - One. A: The folks from research and development indicated to me that they were eager to have it moved along 6 because of the colea inspection that was coming up. I don't know that there was a rush. There was no rush to me to have 8 9 it done. Q: So was it Mr. Margeson who seemed too 10 concerned. Was it Mr. Merryman, or the corporal, who was 11 12 A: I think it was probably the corporal; he was 13 the individual I dealt with that asked to have it moved along 14 because they wanted to have it ready for co lean... Q: So he came over to see you to get the 16 signature. He hand carried over? 17 A: I can't remember at what point he brought it 18 over. He may have brought it over after it went back to 19 research and development after it had been reviewed... Q: I think that's correct...it did go back... 21 A: I'm certain it did. I also recall I had some 22 23 personal questions that I wanted.... Q: He indicated that... 24

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McAlreavy four it's remove these pages one thru seventy insert these pages one thru sixty-eight. OK, now those pages to be inserted would they have the portions that are new that are changes, would they be shaded?

A: They may not be on this document because I direct your attention to paragraph three that says insure all members review this regulation in its entirety. Which is usually an indication that there may be many changes to a document. If it was a change of a word from should to shall that paragraph might say something like, your attention is directed to shaded areas. So the person does not have to read the entire document if nothing is changed about it. This one because of the size of it there were multiple changes to it. Not made by me necessarily. That would indicate the recipients of this AR should read it in its entirety.

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Q: In answer to the question you don't know whether the changes in this one were shaded or not?

A: I would say not. I do not know.

Q: Did you look at the document after it was distributed? Ws a copy sent up to the colonel. I'm sure he has a set there.

	and development where it would have been mission in
2	final. What we call final. Which is the final product.
3	Q: That is the one you autopen on or about
ı	February twenty third two thousand one.
5	A: Yes.
s	Q: That change order that's affixed to the
7	document, not affixed rather, that's distributed with the
8	document because those instructions and those are
9 .	orders from the commissionerright?
0	A: Yes. And you will see here to place this
1	change sheet immediately behind change sheet eight
2	sixty-five. Which is placed in the back of the AR
3	manual so there is a ready reference of any changes
4	that were made. Paragraph five?
5	Q: Yes I saw that.
6	A: And then that would be placed in front of
7	eight sixty-four
8	Q: In the manual itself would you know what
9	the date of eight sixty-five was?
20	A: No I have no idea.
21	Q: Mary do you have a recollection of any kind
22	of orders or directives by Mr. Evanko to look into the
23	events of the FBI investigation into the state police?
24	A: No I do not.

1	A: Actually we keep a set in the library. We do
2	not maintain one back in our offices. We have no need
3	to.
	Q: Did you look at it?
4	A: No.
5	Q: Did you ever double-check it to see if
6	
7	A: No.
8	Q:to see if it was changed?
9	A: No.
10	Q: Did you bring it to the Colonel's attention
11 .	and say you need to check on this or anything like
12	that?
13	A: I don't think I did. I don't recall that I did.
14	Q: OK. You indicated that the corporal call you
15	to come over with those changes, you didn't call him
16	or summon him
17	A: No. He came over to my office after it had
18	been sent back in draft form with my question and
19	other revisions which were made by other persons on
20	it, which I believe, might have been on it. He then
21	returned to my office to answer my questions so I
22	would he comfortable in what I had asked of him for
23	instance the TAM and why my particular function was

not...and he came back and answered those questions

sati factually. For me. Then it went back to research

1	Q: Were you privy to any meetings in which
2	issues concerning Captain Ober and Captain Ober's
3	conduct were discussed?
4	A: No. Absolutely not.
5	Q: Let's say on February twenty third two
6	thousand one, one of these changes were, both of these
7	changes are signedhow would you keep a copy? Do
8 .	you have a list of what goes out under autopen?
9	A: No.
10	Q: So you wouldn't keep anything
11	A: No.
12	Q: You would sign, use the autopen sign the
13	colonel's signature give that to them and keep no
14	record of that transaction in your office, nothing.
15	A: No. There is no need to as I see it. It is
16	returned to the bureau of research and development
17	and I guess they maintain copies of all these directives.
18	I don't keep a copy or file of autopen. Was that your
19	question, do I maintain a file of anything I autopen
20	Q: Yes, I used to have a every document that
21	was autopened. Does the autopen have a counter on it?
22	A: I don't believe so.
23	Q: Does yours take any picture of the document

that it is signed anything like that just a mechanical

device where you put it in and have it sign?

	•			1	Q:are none standard as to the Pennsylvania
1	A: Yes that is correct.			2	State Police. You use standard Pennsylvania State
2	Q: And you don't have a bin or a file where you			3	Police procurement items pens etc
3	keep a record of what is autopen?	٠		4	A: Nothing fancylow bid.
4	A: No.			5	Q: And what ever is in that autopen is the stuff
5	Q: Who has access to that machine besides you?			6	that you folks use, right?
6	A: The commissioner's administrative officer,			7	A: Absolutely.
7	Ms. Ball, she might do some autopening. Her and			8	Q: How many years have you been with the
8	myself might give permission to receptionist or another			9	State Police?
9	clerical person the approval to autopen certificates			10	A: Thirty in July.
10	things of that sort. It's not just accessible to just	•		11	Q: How many years with Captain Evanko?
11	anyone. It is common knowledge that you just don't			12	A: Colonel Evanko two years.
12	use it.		•		Q: Colonel Evanko I'm sorry, I apologize. In
13	Q: Mary where do you get the supplies for your			13	the years that you have worked with Colonel Evanko
14	office? By that I mean the paper the pens			14	have you ever complained about pens that ink that
15	A: In our central supply area. Within our			15	
16	building.			16	doesn't dry?
17	Q: Do you have any input into the products they			17	A: I don't have ink that doesn't dry.
	carry they use the pens the paper clips			18	MR BAILEY: I don't have any further question
18	A: No. I could but I don't. It's just what the			19	Mary.
19	rest of the department use.			20	BARBARA CHRISTI: Nor do we.
20	Q: None of the pens used in the autopen device			.21 .	MR BAILEY: Is your ink dry on you sheets
21				22	their Barb?
22	are unique			23	BARBARA CHRISTI: Well not if I smudge it
23	A: No.			24	with the
					•
					37
	36				
	•				
					·
					N.
1	MR BAILEY: The way your looking it's not				
2	smudging				
3	BARBARA CHRISTI: No it is smudging				
4	MR BAILEY: Did it really?				
5	BARBARA CHRISTI: It is smudgingit may				
6	be the hoagie I had for lunch, oil I have on my fingers				
7	with perspiration.				

MR BAILEY: Mam, before we actually end the

deposition let me step outside with Mr. Ober but I think we are finished though. I don't know if opposing

RODRIQUIZ: The time now is 12:43 the

council will have any questions?

deposition of Mary Bungo is completed.

DARRELL G OBER

: 1: CV- 01-0084.

Plaintiff

vs.

PAUL EVANKO, MARK CAMPBELL, THOMAS COURY, AND HAWTHORNE CONLEY

Defendants

DATE:

April 10, 2002

PROCEEDINGS:

Video Deposition of William McAlreavy

APPEARANCES:

For the Plaintiff: Donald Bailey, Esquire 4311 N. 6th Street Harrisburg, PA 17110

For the Defendant: Barbara Christi Joanna Reynolds

1800 Elmerton Ave. Harrisburg, PA 17110

this matter, Darrell G. Ober. My address is 4311

North 6th Street, Harrisburg, Pennsylvania, 17110.

My phone number is 717-221-9500 the fax is 9600.

BARBARA CHRISTI: Chief Counsel

equally pleased and privileged to represent the

Pennsylvania State Police. My office address is

1800 Elmerton Avenue, Harrisburg, PA. 17110.

Office phone number is 717-783-5568. 8

JOANNA REYNOLDS: I'm an Assistant

Counsel with the State Police representing the 10

defendants in this matter. My address and phone 11

number are those given by the Chief Counsel. 12

ALBERT RODRIGUEZ: Counsel is

ready. You may begin. 14

MR BAILEY: Thank you sir. Mr. 15

McAlreavy. Do you have a particular way that you 16

would want or prefer for me to address you, 17

Corporal, Mr. McAlreavy, Bill, you know. 18

WILLIAM MCAVEARY: Either one is 19

20 fine.

9

13

Q: It doesn't make any difference. Okay, 21

I'll probably just refer to you as Corporal okay. And 22

let me just because you're probably relatively new to 23

these kind of things just talk about some general 24

ground rules that we can observe as we go through 25

William Me alreamy

MR BAILEY: Ladies and gentlemen please be advised that a recording device is in 3 ALBERT RODRIGUEZ: Good morning ladies and gentlemen. Please let me advise you again that 5 video are in operation. Today's date is April 10, 2002. The time now is 9:21. My name is Albert Rodriguez. My address is 4146 Spruce Park, Lebanon, PA 17046. I have been hired by P.R. Video to take this video deposition for the plaintiff. This case is in the United States Court for the Middle 11 District of Pennsylvania. It is docketed at number 1-12 CD: 01-0084. Caption is Darrell G. Ober versus 13

Evanko Et.al. The deponee is William McAveary. 14 Mr. McAveary, please raise your right hand. Do you

understand this is a legal proceeding and do you 16

swear to truthfully answer the questions asked of 17 you? 18

WILLIAM MCAVEARY: Yes I do.

ALBERT RODRIGUEZ: Would counsel please 20

identify themselves and provide their address and 21

phone number for the record. 22

19

18

MR BAILEY: Yes sir, my name is Don 23

Bailey. I'm privileged to represent the plaintiff of

this. This is a deposition; of course you're under

oath. You understand that, and have a duty and

obligation to answer truthfully which I'm sure you

realize. In addition to that, it's important that the,

that you answer fully and completely and that means

not just to the, you know the letter of the question,

but to the broader meanings of the question. If you

will please. If at any time I interrupt you or

something causes an interference with opportunity

that you have to answer fully and completely. I want

you to please make sure that you insist on your

opportunity to do so. And if apology is in order, I

assure you, I'll render them because I might from

time to time as I get caught up in thought maybe I'll

tramp on the toes of one of your answers. If I do

that you correct me if your Counsel doesn't catch it,

Okay. Now, one thing that I, and I repeat these 17 instructions for all witnesses, one of the things that I

19

do that is a little bit different than most Attorneys do

is I encourage you, if you want to know whether it's 20

just curiosity and particularly if it's a matter of

dispelling confusion. If you want to know where I

am going with a particular question, or group of questions, please feel free to ask me. We have

1	absolutely no interest in trick questions or in
2	distorting the factual record for any reason. Okay?
3	A: Yes
4	Q: And the, so you know I don't mind
5	you're asking me what I'm doing or how I'm you
6	anything like that and that goes for your Attorneys,
. 7	Okay? You please feel free to do that. Now, the,
8	from time to time I'll ask questions going into
9	different areas. Usually when I do that, when I
10	change a direction, I'll give you what amounts to a
11	sort of an offer; you know an explanation of what
12	we're doing. If you need a break at some point,
13	don't be afraid to ask, although I don't think we're
14	going to be very long with your deposition hopefully
15	And with all those things being said I assume
16	Counsel that the usual stipulations with objections
17	reserved until time of trial, you know reserved until
18	time of trial, accept as form of the questions. Is tha
19	okay?
20	BARBARA CHRISTI: That's, that's
21	acceptable Counsel.
22	MR BAILEY: All right. Okay, Corporal
23	lets begin. Do you have any questions of me?
24	WILLIAM MCAVEARY: No

1 on projects for department regulations, special

2.	orders, things of that nature.
3	Q: Now how long have you been working
4	in that capacity?
5	A: About two years and four months.
6	The entire time I have been a Corporal.
7	Q: What were you doing before you
8	assumed those duties?
9	A: I worked as a trooper assigned to
10	patrol duties.
11	Q: Did you apply for the position or did
12	you just, were you recruited for it?
13	A: That was a position offered to me with
14	promotion.
15	Q: Now, you're in the Bureau of
16	Research and Development. What does a, you
17	indicated I believe, that you know you talked about
18	special projects etcetera. In laymen's terms could
19	you describe for us the kind of thing you do there?
20	A: I work on special orders, department
21	regulations, things like that. Different areas of the
22	department of manuals and regulations that pertain to
23	their operation. When they want to make changes to
24	these. They will submit there proposed changes and
25	the wording to our Bureau, to our section and it's our

1	Q: All right. Sir just briefly, how are
2	you employed?
3	A: I'm employed by the Pennsylvania State Police.
4	Q: And your rank?
5	A: Corporal
6	Q: How long have you been a Corporal?
7	A: I've been a Corporal two years and
8	approximately four months.
9	Q: All right. How long have you been
10	with the Pennsylvania State Police? Roughly.
11	A: Seven and one half years.
12	Q: And where are you from?
13	A: Originally?
14	Q: Yes
15	A: I'm from New Jersey.
16	Q: Were you from when you joined the
17	Pennsylvania State Police?
18	A: No, I was a resident of Pennsylvania.
19	Q: Where?
20	A: Philadelphia
21	Q: Philly, all right now Corporal describe
22	for us the duties that you perform for the
23	Pennsylvania State Police.
24	A: I work in the Bureau of Research and
25	Development as a programming specialist. We work

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job to put them in proper both format both
grammatically and with maybe certain terms,
whatever the department uses to check them
against other department regulations to look for
conflicts or problems.
Q: Okay, so your sort of like a, almost
like a legislative drafting bureau. Someone comes to
you with an idea or a recommendation to either
originate a new regulation or change an existing one.
You give it form and substance. Is that basically
what you do?
A: I'm not sure that that's exactly an
accurate depiction.
Q: Okay, well you
A: Different areas of the department that
have the responsibility for those regulations.
They're responsible for deciding how they want to
run those operations. We more, like I said, there's
certain terms or phrases or the way the department
likes to see things worded in regulations. If they
don't have that, we might change some of the
wording, if the grammar isn't correct, we check
spelling, we use a Gregg reference manual and check
punctuation and things like that. We put it into the

format for the correct size of the page, depending on the manual, that type of thing.

Q: Well, so if I come to you and I'm a Major out there and I come to you or I call up and I say that, you know I think we need to change our regulations on dealing with vehicles I think we need a regulation which requires certain information to be reported. And I think that the regulation X, section Y, sub-section Z should be changed by adding the following sentence. Let's say I come to you with something like that. What do you do?

10

11 A: Well that would normally come 12 through the section head, Sergeant Margeson, who's 13 my immediate supervisor, and it would get assigned 14 as a project. So if it makes it through whatever 15 process that is above me and is assigned as a project than I would look at it. I would get in touch with 17 contact person who is normally listed to see what the 18 exact intent is that they are looking for with that. I 19 would check the wording, like I said depending on what it is for; I would check it against other similar 21 regulations to make sure that it's not conflicting with something else that is written somewhere else. Put 23 the wording in.

q

here. I think you've indicated that if Sergeant Margeson had assigned you a project you would get back to, you mentioned contact person and the contact person in my hypothetical would be Major Bailey. Is that right? I was the person who came up with this idea and submitted it and when Sergeant Margeson would assign the project to you he would give you the information necessary so you know who to talk to. Right? A: When the project is assigned to you, 10 you get the information as it came to you from the 11 originating area and the name of the contact person. 12 In some cases the contact person is the Major who's the head of that particular bureau where ever it came 15 from. But not in every case. Sometimes it is somebody else assigned to that bureau. 16 Q: In my hypothetical I was the person 17 who did it. I'm really not concerned with what my 18 rank would be. I'm going to assume that anyone 19 from a commissioner to a trooper could make a 20 recommendation and if it was worthy of a project 21 assignment in the eyes Mr. Margeson or who ever, 22 you might get assigned that project. Is that right? 23 A: I'm not sure I understand that 24

question.

25

Q: Okay, all right. Sir let's say that I'm Major Bailey. I'm in the Pennsylvania State Police and the, you know no reason to change the example I just gave you. Regulation X, section Y, sub-section Z. I'd like to change by adding this language and I want to accomplish this purpose. I either verbally or in writing send this into the bureau or contact the bureau and a decision is made to assign it as a project. Is that right? A: Yes 10 Q: And that decision is made by the 11 section head. In this particular case it's Sergeant Margeson. Is that right? 13 A: I don't know who actually makes that 14 decision. That's not my area. 15 Q: Okay 16 A: Sergeant Margeson is who assigns me 17 projects. 18 Q: Okay, so at least sometime on or about 19 the late year, late 2000, late 2001, you would have 20 been in a position, if indeed it occurred to be assigned a project by Sergeant Margeson. Right? 22 A: Yes 23 Q: Yes, okay. Now, what does assigned a project mean? Now let me just to save a little time

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O: Well, who's the contact person? What's that word mean? What's that phrase mean? A: That's the person assigned to the bureau or area where the change, the proposed change came from that you liaison with if you have questions for that bureau or if questions about the regulation or what the intent is. That's the person that you contact. Q: So the contact person may not be the originator. Right? 10 A: It may not be. That would be up to... O: It usually is. 11 12 A: That would be up to the bureau. That 13 originates it. Q: Okay, okay, that's okay sure that 14 would be up to the bureau that originates it or however it's communicated but in any event you're given a contact person, you're given someone to liaison with. Is that right? 18 19 A: With most projects yes. 20 Q: With most projects. Well, do you have an idea of how many projects you've worked on 21 in your what, two years of being there? 23 A: I don't have any kind of solid number.

24 No.

1	Q: Well, could you tell us the procedures
2	that you follow in terms of how you keep records of
3	your projects, what procedures and practices you
4	utilize?
5	A: When you are assigned a project, you
6	are given a project folder which list the project
7	number and then, it has your name and the, generally
8	the name of the project on it. If it for regulation, it
9	will state that regulation. Inside the project folder
10	you keep a project-tracking sheet and you note
11	significant events or happening while you're working
12	on the project, on the tracking sheet and you keep it
13	as a running log.
14	Q: Go ahead sir.
15	A: That's how you track it.

A: That's how you track it.

Q: Well, now Corporal McAveary, do you, I mean do you keep notes of what you do?

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A: Notes, how? 18 Q: Well, you get assigned a project to 19 make changes on a regulation. Now you strike me as 20 a particularly bright and a very articulate person, I'm 21 not blowing smoke. I mean that's the way you 22 impress me. Pretty sharp. You keep all this stuff in 23 your head or do you keep notes of what you do, you 24

13

know talked to so and so on such a date, so and so

the project summery? Now we're talking about your practices. I'm not saying that you know, anyone else, we're just talking about Corporal McAveary. A: Depending on the entry made. You keep things that would support that. Q: Do you throw them away? Do you keep them at home? A: They go in the project file. 8 Q: Okay, they go in the project file. Give me a brief description of the kind of things that 10 might be on your notes in different cases that you've 11 12 done. A: When you first get it, you would mark 13 that you received it and reviewed it, when you send 14 an e-mail to the contact person, if there is one, notifying them that you have the assigned project 16 person, making a note when you receive the project 17 back signed with a reproduction order to take it down 18 to reproduction. 19 Q: You, do you keep drafts in there? 20 21 A: Normally there's certain copies of drafts in there. The original draft as it came from an 22 area, if it originated outside the bureau. The area 23 that originated to proposed change and then changes 24

from a certain level beyond are kept to record.

made such a recommendation, if the project called for that. Do you do anything? A: That would the type of thing normally you would log on a project tracking sheet, O: Well I'm familiar with project tracking summary. Isn't that what the name of it is? Project summary. A: It may be. I'm not sure of the exact name of the ... O: Okay, all right. Well, on a project 10 tracking summery or tracking sheet, just so we make 11 sure we're on the same page. There's not a 12 difference between a project tracking summery and a 13 project-tracking sheet, that you know of. Is there? A: Not that I'm aware of. 15 Q: Okay, I just want to make sure 16 because I don't want to make a mistake. This is an 17 important litigation point and I don't want to make a mistake. Now, on the project tracking summery, it 19 starts off with there's a project number, date assigned, date due, that kind of thing. Right? 21 A: Yes sir. 22 Q: Okay, now do you keep notes, 23 summaries, information of any kind that support or clarify the entries that you make on your project, on

14

	Q: You kept your noted on the AR1.
!	That sub-section C? AR1.102 sub-section C. Did
	you keep your notes on that?
ı	A: What is it?
	Q: It had to do with chain of command.
5	Do you have any recollection of it?
,	A: I have a recollection of the
3	recommendation. Yes
)	Q: Well, you tell me what you recollect
)	about the regulation and as your memory comes back
i	we can talk about what you did on the project, but if
2	you could tell me about the regulation. What do you
3	remember about the regulation?
4	A: That was the regulation written on
5	chain of command.
6	Q: Now where did it come from?
7	A: The regulation itself or the AR1-1?
8	Q: Well, AR1-1 is more or less you basic
9	peonee right; I mean it's your basic organizational
0	regulation. Right?
1	A: Yes
2	Q: And, do you, by the way, when you
3	do your research, do you look at the regulation as

existed, as it exist before you go into changing it?

A: Yes

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1	Q: Yes, because, I mean it only makes
2	sense like in a big unation of laws and not men is the
3	saying goes, the idea is that if you going to alter
4	regulation, you have to know what you're building
5	on or what you're changing, or what you're adding.
6	Right?
7	A: Yes
8	Q: So if you got a proposed change,
9	language for a proposed change. What are the issue
10	that you would examine as a project officer would be
1.1	where to place it, where to put it, right? Well, let m
12	ask this way sir. Take AR1, if you get a change.
13	Somebody says I think we need to add something on
14	chain of command. Do you just staple it to the end
15	of the, the AR or do find the place where it belongs
16	A: We try to find the place where it
17	belongs.
18	Q: And, I can imagine, I don't know
19	because I never walked in your shoes but I can
20	imagine that from time to time sir that might not be
21	so simple a task, you know one would need to know
22	where this would fit in the organization,
23	organizational chart, or into the regulation itself and
24	that might affect things like distribution, what its

anything with you, why Sergeant Margeson worked

with you on that project?

interaction is with other parts of an AR or other

A: Well, the project came up about adding something on chain of command to the regulation. Q: It did? 6 A: We were already working on AR1-1 when we decided to add that to it. 8 Q: Yes, yes, and once, before sub-section. 9 C was added, do you have a recollection of when the 10 last time you had worked on AR1, on that particular area and who worked on it with you? 12 13 A: On the chain of command area or the entire AR1-1? 14 Q: I would assume that the entire AR1-1 15 probably receives a considerable amount of attention because of its huge breadth and its, many of the 17 issues it deals with. Right? 19 A: Yes Q: Now I did note. I want you to correct 20 me if I'm wrong now Corporal, but I do note that 21 when I did what little research I could do into it. I 22 didn't have a whole lot to work with to be quite 24 honest with you. As it turned out. But when I

started checking on it, I found out that the, before

1	AR's themselves. Right? You need to know where
2	it goes for that reason.
3	A: Yes
4	Q: Okay. You did that with sub-section
5	C didn't you? Do you remember sub-section C at
6	all?
7	A: Yes
8	Q: Did you do that with sub-section C?
9	A: Yes, Sergeant Margeson and myself.
10	Q: Oh, okay see I was confused. Okay,
11	you worked with Sergeant Margeson on that?
12	A: Yes
- 13	Q: Who else did you work on it with
14	besides Sergeant Margeson? If anybody, I don't
15	know that you did.
16	A: Other than the normal proofreading
17	process that all the regulations go through, nobody
18	Q: Sergeant Margeson tell you, he
19	worked on you personally with that project?
20	A: Yes
21	Q: That's not unusual?
22	A: Not necessarily.
23	Q: Not necessarily. Well, do you
24	remember why if he ever expressed any, shared

18

you fellows added sub-section C, the last change to
ARI that I could find. Certainly the last change
having to do with that particular area of AR1 was
back in 1997 in the month of July. Is that consistent
with your recollection sir?
A: I don't know off the top of my head. I
would have to review my folder.
Q: Your folder. Do you have a folder
that exist separate and apart from the historical file
Corporal?
A: No, I was referring to the historical
file.
Q: Oh. When is the last time you looked
at the historical file Corporal?
A: It would have been when the project
was completed. I turned it in.
Q: Okay, okay. Well, did Sergeant
Margeson indicate to you why he was working on
that with you?
A: We were trying to come up with some
wording for chain of command and trying to decide
the best place to put it.
Q: Did he say where he got the
suggestion?

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A: From what I understood discussing
with him. There had been some problems in the
department. Particularly from what I heard, I guess
it was Major Washington's bureau.

Q: Yes

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12 13

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A: I believe he was of me so at the time but somebody going outside of normal chain of command and also one of the concerns was in some of the areas of the department you have enlisted members who supervise civilian personnel and that that was a problem there too.

Q: Emergency problem, was it?

A: I'm sorry.

Q: Exigency, Exigent circumstances, an emergency, a real urgent need to jump on that and get it fixed real quick.

17 A: I don't know what type of urgency it

was. It was an identified problem so... 18 19 Q: Okay, well if I remember correctly, the, before, lets look in the year 2000, okay. In the 20 year 2000 from what I could tell, now this is just a, 21 you know, my impression, there was some scattered 22 interest in AR1 maybe about September, October of 23 the year 2000. And I want to be honest with you, when I looked at the historic file, I couldn't find any

Q: Well, doesn't it affect the relationship

2	in terms of providing guidance between you and
3	Sergeant Margeson, you're superior?
4	A; Yes
5	Q: And doesn't it affect by providing
6	guidance to every single trooper and every single,
7	and every one of their superiors, doesn't it affect
8	that relationship and provide guidance by regulation.
9	A: Yes
10	Q: What's your understanding of what it
11	does? You're the project officer and you worked on
12	it. I'm sure you have a recollection of the
13	importance you attach to it and the purpose of it.
14	Would you please share that with us?
15	A: The purpose of the regulation was to
16	provide guidance to all personnel. That when they're
17	performing their normal duties and they have a
18	question or some type of request or whatever, that
19	they are to follow the normal chain of command in
20	other words, if you are a trooper, you would see your
21	Corporal, and then Corporal would see the Sergeant,
22	and so on, and that you couldn't jump around the
23	chain of command, if you were looking for a better
24	answer so to speak.

1	documents at all, nothing, to support how sub-section
2	C the addition popped up, where it came from. And
3	that's why I want to ask you those questions and
4	we're sitting here today. I need you to help me with
5	that okay. Because you're the project officer. Your
6	name is in there. And we talked to Mr. Margeson, so
7	we need to try to find out how this popped up, the
-8	way it did, and how it came into the file, and what
9	notes were put in there. Did you put any notes in
10	there sir? Did you put like, you know summaries of
11	conversations, or conversations with contacts, or
12	draft language, or anything like that? That you can
13	recollect. If you can remember.
14	A: I can't recall.
15	Q: Well, do you have any recollection of
16	attaching any particular importance to this sub-
17	section C and by that I mean the affect that it would
18	have, you know, having it reviewed carefully. I
19	mean here's a chain of command section. Right?
20	It's going to affect the relationship between every
21	single subordinate and their superior in the
22	department. Am I correct? That's what it's

A: Affect it how?

supposed to do?

1	Q: That's your understanding of what it
2	was about. If you were looking for a better answer
3	A: That's one example.
4	Q: Okay, give me some more, now you
5	gave a lot of thought to this because I assume you
6	and Sergeant Margeson worked on this so give us
7	your recollection of the, I mean hear you have a four
8 ,	thousand member department that's been running
9	since 1905. Mr. Evanko refers to it at least as a Para
10	military organization. It's obviously one of the
11	finest Police organizations in the United States if not
12	the world and we're deciding in year 2000 that we
13	need to tell our members what the chain of command
14	means. And I'm trying to find out, you know
15	thought and effort, because they apparently don't
16	know or don't understand so I'm trying to find the
17	thought process that, you know you and Sergeant
18	Margeson. What you went through and what you
19	talked about in terms of what this thing was
20	supposed to mean. Did you draft the language by the
21	way Corporal?
22	A: Sergeant Margeson and I drafted the
23	language. Were in conjunction on that.

Q: Okay. Well, aside from you Sergeant

Margeson who did you discuss the language with?

1	I'm sorry sir. Aside from Sergeant Margeson and I
2	want to get back to the purposes again. I don't want
3	to leave that. Aside from Sergeant Margeson who
4	did you discuss the language with?
5	A: I don't recall discussing it with
6	anybody. I would have to check the project folder to
7	be sure.
8	Q: Well, would the project tracking
9	summery have who you talked to about on it?
10	A: Normally, yes.
11	Q: Normally, would it? Now, in the, you
12	know, how about you looking over this project.
13	Would you look over this project summery for me?
14	And I want you to look for things like sub-section C
15	lan, I going to, you know, you're the project
16	officer, you look that for me sir. Let your counsel
17	look at it
18	BARBARA CHRISTI: Are you marking
19	the documents Counsel?
20	MR BAILEY: Oh, I might, you know, I
21	will, sure, might do that.
22	BARBARA CHRISTI: Are you going to
23	identify it some how?

25 your first trial witness identify it and then we'll, you

MR BAILEY: Well, why don't we have

BARBARA CHRISTI: Right. Are you making the copy from what the witness is reading? So what I'm saying. Do you want to take a break while we make the copy and then the witness can continue reading? MR BAILEY: Well we probably could have done it by now but if you think it's okay. I don't think we need a break. We can stay on camera. 8 BARBARA CHRISTI: Okay 10 MR BAILEY: Rick could run out and make a copy. It would take what, two seconds? Take about half a minute. Could you give that to 12 him sir and let him make a copy then. Thank You. 14 Well why don't you make a couple copies so that the 15 counsel can have one too. 16 BARBARA CHRISTI: Thank you. MR BAILEY: Okay, do you have the 17 project tracking summery in front of you? 18 BARBARA CHRISTI: Counselor are we 19 20 marking this ... 21 MR BAILEY: Yes, lets, can you identify it for us sir? Tell us what that is. 22 23 WILLIAM MCAVEARY: Yes, that's the project tracing summery from the AR1-1 project.

know, I want to, if you let him look at it first I'll do those things. BARBARA CHRISTI: You're handing the witness eight pages, each of which to my brief review here captioned " Project Tracking Summery." Witness will review the pages. MR BAILEY: Yes, that's what we've asked. Appreciate that very much. In fact may I make a suggestion and respectfully ask that you make a copy of that so he and I can use it together. BARBARA CHRISTI: And are you going 11 to be marking the copy for the witness so that we have it for the record? 13 MR BAILEY: Sure 14 BARBARA CHRISTI: That you're going 15 to be questioning him on it? 17 MR BAILEY: Yes BARBARA CHRISTI: Okay do to take a 18 break in order to make that copy or do you want the 19 witness to continue reading while the depo. is in 20 21 session? 22 MR BAILEY: I, you know we'll do whatever pleases you. I don't how long it will take 23 you to get a copy. I thought we could just jump out hear and get a copy pretty quick.

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1	Q: Okay, and just for the record how
2	many pages?
3	A: There are eight pages here.
4	Q: Okay, and let's just mark as
5	"McAveary One", okay. Okay look on the first page
6	there. It says March 6th, 01. See that entry down
7	there? That's the last entry, right?
8	A: Yes
9	Q: It says from reproduction and
10	distributed. Project completed. Do you see that?
11	A: Yes
12	Q: Who made that entry?
13	A: I did.
14	Q: Now what can you tell me about that?
15	Who brought that back to you?
16	A: I'm sorry. Who brought what back to
17	me?
18	Q: How did you end up getting that
19	thing?
20	A: When you drop a project at
21	reproduction, when it's done, they call you and let
22	you know. You go down, you look at it, make sure
23	that it looks like what you submitted. You carry the
24	marked copies over to the mailroom for distribution.

You bring the copies for the Bureau of Research and

Development upstairs. Distribute them to the members and things in the bureau. Clean up the file and then mark the project completed. Q: Okay, so what says is in pick up from repro. that last thing that happened, that's after, 5 that's where the project had been taken to have it printed up once it was completed. Right? So it could be distributed out to the members, what not. Q: Well, who does it get distributed to? 10 A: This particular regulation goes to 11 distribution AR. Goes everywhere that there is an 12 13 AR. Q: Okay, now you say everywhere there's 14 an AR. That means everywhere where that particular 15 regulation is kept as per the practices and regulations 16 of the Pennsylvania State Police. So would AR1, 17 18 where is it kept? Where is it going, where's is this going to be, where's this change going to be 19 20 distributed to? A: I'm not intimately familiar with AR 21 distribution table. You know, there's a table that list 22 who has to keep AR's and how many. 23 24 Q: Well, does an AR1 go to every trooper 25 out there?

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O: Received back signed with repro. order delivered to repro. You're the project guy and you did that. Right? A: Yes Q: Well who was it signed by? A: The regulation itself? O: Yes A: The signature on it was Colonel 9 Evanko's, but it was auto-penned. Q: The signature on it was Colonel 10 11 Evanko's? 12 A: Yes, but it was auto-penned. 13 Q: Oh was it? 14 A: Yes 15 Q: Well, you remember it was auto-16 penned? 17 A: Yes 18 Q: Why do you remember that? 19 A: I was there when it was auto-penned. 20 Q: Oh. Well, who else was there when it was auto-penned? 21 22 A: Ms. Bungo. She's the person that auto-penned it. 23 24 Q: Now, how many folks work over in Research and Development?

ı	A: 140, every individual does not have a
2	copy of the AR.
3	Q: Well how would the average trooper
4	out there, how many troopers you got out of this
5	group? Fifteen hundred, two thousand, three
6	thousand, I don't know.
7	A: Out working the road, do you mean?
8	Q: Yes sir.
9	A: I don't know the exact number.
10	There's a substantial number.
1,1	Q: Okay, How would they get the word.
12	A: There's library copies of the AR.
13	Normally the patrol Sergeant in the station and the
14	station commander has a copy. They are available to
15	them on their stations.
16	Q: You know of any efforts to teach
17	them, to go out there and talk about this with them
18	and notify them about this thing.
19	A: That's not really my area.
20	Q: Not your area. Now it says, February
21	27, 01 at 9:45. Do you see that?
22	A: Yes
23	Q: Now looks like the same writing and l
24	assume that's you.

arrange individual door not have

30

A: Yes

A: In the entire bureau? Q: Yes. Your having, struggling with that which means you probably just don't know. A: I don't know exactly. Q: All right. How did you come to be over there when it was auto... Were you hand carrying this? A: I hand carried that back. As you can see there was questions from the front office on the regulation. I took them back. They were questions and notes on the regulation from Ms. Bungo so I took it back and I discussed it with her. 13 O: Well what questions did she have? 14 A: I don't remember them all exactly. 15 One of them that does stick is there was a question 16 like the regulation is written as, I'm sure you've seen in an outline format. And the TAM was listed 17 18 under the same type of level that the troop administrative manager, as the troop commander, and she just had a question. Should be over one, I don't 20 21 remember if it was a letter or number, you know, because she falls under the troop commander, is it all 22 right, and I explained it, that it was done that way because of their duties, to list their duties, and things like that. 25

1	Q: See, I don't understand what that
2	means. Is this something that affected the language
3	in the sub-section?
4	A: In sub-section C?
5	Q: Yes
6	A: No
7	Q: Well, did this affect distribution?
8	A: Ms. Bungo's questions?
9	Q: Yes
10	A: No
11	Q: Well, what does this TAM, what does
12	it mean? I don't understand
13	A: A TAM is a Troop Administrative
14	Manager.
15	Q: Okay
16	A: That's a civilian position within the
17 -	troop.
18	Q: And she wanted to know if it affected
19	them?
20	A: She just wanted to know if it was in
21	the right place.
22	Q: Whether sub-section C was in the
23	right place.
24	A: No, whether the thing for the TAM
25	was in the right place.

1	Q: Sir, are you testifying here today that
2	those notes and corrections were placed in the
3	historical file you?
4	A: They would normally be in the
5	historical file.
6	Q: Sir that's not my question and I'm not
7	being tough on you now please bear with me okay
8	cause I pride myself on not being argumentative with
9	witnesses. I never do that. This is very important.
10	You're testifying here this morning that the
11	regulation, I'm sorry sir, at this stage it would have
12	been a proposed regulation change, sub-section C.
13	We know, we have an understanding of what that
14	means. Right? That correct sir?
15	A: Yes
16	Q: Okay. That it came back to you.
17	Strike that question and rephrase it. Sub -section C
18	came back as I understand from your testimony from
19	the front office.
20	A: No
21	Q: From Ms. Bungo?
22	A: No. The AR1-1 came back. Sub-
23	section C did not come back.
24	Q: Okay, an AR1-1 came back from Ms.
25	Bungo?

Q: Well, we may come back to that. I'm still having a hard time understanding that, but, what that means. What other questions did she ask you? 3 A: Like I said. I don't remember them all specifically but she had some questions, you know, about operational things within the department. How it was listed in AR1-1. Q: Anybody else there when she was 9 asking these questions? A: No 10 Q: And where did those request take 11 12 place? These questions take place? 13 A: Well the project was received back 14 with notes on it and I took the project back over and then and discussed it with Ms. Bungo in her office. 15 16 Q: Oh, it had notes on it? 17 A: Yes 18 Q: And did you put that in the historic file? 19 20 A: I put that it was received back for 21 corrections. 22 Q: Well what did you do with the notes and corrections? 23

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A: They would be in the historical file.

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A: Yes 2 Q: With recommendations or corrections 3 or some kinds of notes or questions, describe what 4 was on it. 5 A: They were questions. Q: And they had nothing to do with sub-7 section C? A: No Q: They had to do with AR1. 10 A: The entire AR yes. Q: The entire AR. But you are that they 11 12 didn't have to do with sub-section C. You're certain 13 about that. 14 A: Yes, Ms. Bungo didn't have any 15 questions about that. 16 Q: She didn't have any questions about 17 sub-section C? 18 19 Q: Well, you put into the historic file then. Those corrections or questions are in the 20 21 historic file because you put that in there didn't you? 22 23 Q: Well, what did you do with it? 24 A: With the questions? 25 Q: Sure

A: If no changes were made, I wouldn't have done anything with them. I would have just answered her question. O: Well, do you answer them in writing? 5 A: No, I would have answered them with her. Because no changes would have been necessary to the regulation then. Q: And, you wouldn't have made any notes about that inquiry or anything like that. 10 A: Just where I put that I received it 11 back. And that it was resubmitted. 12 13 Q: Okay, so there were other changes to AR1 at the same time that sub-section C was being 14 15 changed. A: The entire regulation was being 16 17 revised, yes. 18 Q: The entire regulation was being 19 revised. 20 A: And had been for some time, as you can see from the project-tracking summary. 21 Q: Well, I'm looking at the project-22 tracking summary and it indicates here that at 23

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of stuff. They put the list there. You know what I'm

February 27th, 1901 or 2001, I'm sorry, that 9:45,

received back signed with repro. order. So now we

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talking about? Q: All right. How is set forth in AR? I'm sorry, I'm sorry, How is that set forth in the historic file in an AR? Let me try to redefine it this way sir. If I go to an AR historic file, the last entry in that file, I assume, let's say that on March 7th, 2001. The last entry in that historic file of AR1, assuming it's been posted up to date, you know, 10 within a day or two. All right. Would be the version of when it was changed. Right? The version of the, 12 13 of the regulation. 14 A: One of the things that's required to be 15 in a historical file is the regulation prior to the 16 change that, that file makes. So for the AR1-1 then, 17 one of the things that should be in the file is AR1-1, 18 as it appeared the regulation prior to this change. 19 Q: Okay, now, Corporal let's say I 20 change AR1-1 in July of 1997, okay. And let's say I get the recommended changes and they're all 21 approved and it's distributed. A copy of that is 22 23 supposed to be in the historic file. Am I correct? 24 A: Of the new one or of the old one?

go back before that to February 22, 01. It says resubmitted to front office. Well, what was it resubmitted to the front office for? A: That's when I took it back up to Ms. Bungo. O: You're telling me that there were all kinds of recommended changes to AR1 at that time and that there was a whole, the whole dog-gone ball of wax was being reconsidered? A: No, I'm telling you that there were notes on there with questions. 11 O: But they're not in the ... well. None of 12 this, none of these proposed changes or questions 13 were in the historic file sir? A:, They wouldn't necessarally be, no. 15 Q: Well would none of them be? You're 16 the project officer on this sir and I've got to tell you 17 I reviewed that file. I examined it. And I want to 18 ask you a lot of questions between what occurred from October of 2000 until February o f 2001. Sir, 20 I'm being honest with you. Captain O ber was with 21 me. We were in Mr. Brown's presence. There's nothing in that file. Did you clean that file out sir? 23 A: No 24

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Q: Do you know if someone e else di d?

Q: No, no, not the new one's. Of the his... well the historic has a history of the whole regulation. It's there. That's going to be there. Correct? The regulation is going to be there. The last regulation distributed, the copy of it's going to be there. That's part of the historic file. A: Correct. Q: Okay. Now, as I move on into the future and there are recommendations made to the, to change the regulation, etcetera. Calendar wise they're just added on as you move forward. Right? 11 In time. 12 A: The, I'm sorry. 13 Q: Well, you know, I changed this thing 14 and I post the distribution that include all the 15 changes to the regulation, let's say, let's say, by March 10th, 2001. The new AR1-1 is distributed on the sixth of March and let's say within a week, the change is posted. The new regulation is posted. A copy of it would be posted to the historic file. Okay? Is that fair to say? 21 A: Yes 22 Q: Yes. It might be a week. It might be 23 a little more. Might be a little less. But whatever

the time, the process physically takes. That's what's done. Right? 2 A: Yes Q: All right, now anytime any change is 3 made to that regulation, that AR, however it's altered, has to be, that change, has to be posted to the historical file. At least it's supposed to be, if no errors are made. Is that correct? A: The new changes in the historical file 8 for what you did and also how the regulation existed 9 before this change should be in every historical file. 10 11 Q: Yes. Should be there. Right? 12 A: Yes Q: And that's standard procedure with 13 the Pennsylvania State Police on the way historic 14 15 files are kept. Am I right sir? 16 A: Yes Q: Do you have any ... Strike that. Are 17 there any facts known to you which indicate from 18 your work with the historic file AR1-1, that parts of 19 it were ever missing or taken out of the file before 20 you dealt with the changes in the winter of 2000, 21 22 23 A: No 24

52

A: When I got the new project number 2 for this. 3 Q: Okay, and that... A: Are you familiar with where the project number is on the sheet sir? 6 Q: That would be, just a second, oh yes, 7 pages are out of order. That would be project 8 number 970343. 9 A: That was the old project number. 10 O: Okay 11 A: The new project number was 0547, 12 000547. 13 Q: I see it. Two thousand. 14 A: Yes 15 Q: 0547. So... 16 A: I was marking this sheet for this new 17 project number. 18 Q: Now do you know when, it says, I just 19 want to ask you this now, see it says original source 20 21 RD. A: Yes 22 Q: What's that? 23 A: That's normally where the project 24 25 originates.

Q: Now, do you remember when you last looked at the historic file of AR1-1? A: As I said earlier. It would have been when I closed the project out. When the project was completed Q: Did it include a copy of the AR1-1, as it existed, as it had last existed in July of 1997 before it was changed by these changes? A: It should have. I don't know exactly if it did. I can't remember back that far. Exactly everything that would have been in the file. 11 Q: Okay. Now, let's go back to the project summery. And I'm go to number these pages 13 as they go back in time. Let's go back to page number one. Okay? The entry at the top is October 14 10, 2000. And all it says up there at 0 900 hours is received and reviewed. Now I don't know sir if that goes with the next parts of this or what it is but would you explain this entry cause underneath that says 0 900 to 0 915. Okay? Now that also appears to be your handwriting. Am I correct? 21 22 Q: Would you review that and describe 23 those entries for me. 24 A: That was the date the tenth of October

53

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Q: And what does that mean, RD? A: It means the Bureau of Research and Development. Q: Okay. Well, does that have anything to do with Mr. Washington, Leonard Washington; I mean that wouldn't say that. In other words, if this idea changed, originated with him, it wouldn't say that. It wouldn't have his name. Would it? A: It wouldn't his name there. It would have his Bureau. 10 Q: But it doesn't have his Bureau, does 11 12 'it? A: No 13 Q: It has RD. Right? 14 A: Yes 15 Q: And that's Research and Development. 16 17 Right? A: Yes 18 Q: That doesn't indicate that it came 19 from outside of Research and Development, does it? 20 21 Q: Now would you look at date assigned 22 for me, please? Would read for the record what it 23 says on date assigned. 24 A: 10/10/2000

	_
1	Q: Now that's October, anyway you read
2	that one, that date time group as got to be October 10
3	of 2000. Right?
4	A: Yes
5	Q: You know why it was assigned then?
6	A: As I said, that's just when the number
7.	was reassigned.
8	Q: Okay
9	A: It's given a newer number.
10	Q: Then it says date due, 10/31/2000.
11	See that?
12	A: Yes
13	Q: Okay. Now, let's go now down to
14	your entries and let's look at 10/10/2000. See that?
15	A: Yes
16	Q: Checked with Rose Pollack. Who's
17	Rose Pollack?
18	A: She works in the Bureau of Human
19	Resources and Management; she's a division
20	director.
21	Q: And that had to do with those
22	personnel changes you and I talked about. Right?
23	A: Yes
24	Q: Okay. Who's Stan Berkholder?
25	A: He also works in that same Bureau.

Q: So that has to do with all of those

2	personnel things. Right?
3	A: Yes
4	Q: Let's go to October 16, 2000, 15 15
5	hours. See that?
6	A: Yes
7	Q: Received appropriate new sections
8	from Lieutenant Benedict. I'm going to guess that
9	that has to do with personnel matters. And if not,
10	explain to me what it's about.
11	A: I don't remember exactly what those
12	were from Lieutenant Benedict.
13	Q: Who is Lieutenant Benedict?
14	A: He is a Division Director in the
15	Bureau of Research and Development.
16	Q: Oh. And you don't remember what
17	the appropriate new sections were that came from
18	Lieutenant Benedict though? Or does that make, is
19	that making reference if you remember sir, try to
20	think back to the personnel changes above.
21	A: I don't remember exactly which
22	sections Lieutenant Benedict gave to me.
23	Q: Okay, okay. Now it says, now there's,
24	now we're there, October 20, 2000, 12:50. It says
25	submitted to Pam.

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Q: And that has to do with the changes
or a the debout earlier that came from
Q: And that has been that came from that you and I talked about earlier that came from
personnel. Right?
A: Yes Q: Okay. Now how about Brenda Ester.
5 Cray. The sarry sir.
6 Who is she? Estep, I'm sorry sir.
7 A. EStep. 7 Brenda Estep.
A: She works in the same Bureau.
9 A: She works III
11 talked about. Right?
12 A: Yes 12 Q: And that has to do with the personnel
13
14 changes. Right?
15 A: Yes 16 Q: Okay, now Ann Shawnee Smith.
10
A: Yes 17 Q: Okay. She also works in personnel,
19 I'm going to assume.
· • • • • • • • • • • • • • • • • • • •
Q: And it has to do with the following,
Pureal of Personner in
concerning changes to Bullous 22 concerning changes to Bullous 23 1. Will attempt to locate new sections. See that?
23 1. Will attempt to tocate man
A: Yes

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Q: See that? Who's Pam? A: Pam Yandridge. Q: Yes A: She's a civilian employee. Q: Yes, she's a civilian employee that works in R and D. Am I correct? 7 A: Yes 8 Q: Okay. Now why would that be submitted to Pam, Corporal? A: She proofreads the projects. 11 Q: Okay, all right. Now let's go to 01, 12 now this, now we're in January 19,2001, 10 35 13 hours. Resubmitted to Sharon. What's that about? 14 A: At some point I would have gotten the 15 project back for corrections from Sharon. So I resubmitted it to her with the corrections made. 17 Q: Okay. Is there any mention so far of 18 sub-section C or you and Mr. Margeson working on anything together? 20 A: No, not on the project tracking 21 22 summery. Q: Does Margeson's name appear there 23 anywhere on this? 25 A: No, it does not.

	Q: Anything about chain of command or
	any bureau outside of R and D appear there.
	A: No
	Q: Okay. Now, then we have, we're
	going, now we're down into February 12, 2001, 14
;	30 hours. Received back for corrections. Explain
,	that to me.
3	A: That is when I would gotten the
)	project back from the front office.
)	Q: From the front office. Now, by that
1	time was sub-section C in there? Do you know?
2	A: Yes
3	Q: Well let's go back up to 01, 19 01.
4	January 19, 01, 10 35 hours. Resubmitted to Sharon.
5	Was sub-section C in there?
6	A: Yes
7	Q: Let's go back up to October 20, 12:50
8	Submitted to Pam. Was sub-section C in there?
9	A: It should have been. I don't recall
0	exactly, as I said, when Sergeant Margeson
1 !	approached me about adding that to the project.
22	Q: Well, when I looked at the historic
23	file, I couldn't find any, I mean I submit to you sir,
24	you know, I could not find any draft language, any

draft paragraphs, any notes, as the conversations,

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Q: Yes, okay. Now, it was resubmitted to Sharon. Now, it says that, now let's go to February 12 again 14 30. Received back for corrections. What corrections? A: Those would have been the questions from Ms. Bungo. That were on there. 6 Q: But they're not in the historic file 7 either and you wouldn't have put those in either. 8 That was your practice? Not to put, I mean you get 9 corrections back from the front office, were they 10 correction personnel lists or what. I mean, what 11 were they correcting? Do you remember? 12 A: As I said, they were questions that she 13 had. 14 Q: About the civilian officers or 15 something. About the civilian managers. 16 A: Yes. She had several questions about 17 areas in there. 18 Q: Well, and now thanks to your kind 19 help here I'm beginning to understand a little bit, 20 those are about personnel and personnel categories 21 and changes. Right? 22 A: Yes 23 Q: Yes, okay. Now February 22, 2001. 24 Resubmitted to front office. 25

meetings with Mr. Margeson or anything like that. Do you have a recollection whether you put any kind of references in there at all or this thing just, you know it almost looks like it dropped out directly into the, and I'm saying it did, I just don't know. A: When we agreed on the wording. I would have just put it right into the regulation. I wouldn't have made up copies specifically for the file. I would have just put it right into the 9 regulation to go through the proofreading process 10 and the approval process. Q: You would have. 12 A: I did. 13 Q: Oh, you did? 14 A: Yes. I just put it, as I stated earlier, I 15 put it into the regulation. 16 Q: And, will you remember that now. I 17 mean remember that you did that. Right? When did 18 you do that? A: When did I... 20 Q: Put it right into the regulation. 21 A: As I said, after we would have agreed 22 on the language. You know, when you asked me if I 23 typed it up, and I said yes I typed it into the regulation. I just put it right into the regulation.

61

A: Yes 1 Q: Would there be like aside from just these sheets, would there be any record of resubmitted changes to ... I mean see here's what I'm having trouble with. Here's my problem sir. It's very, very simple. I can't find in looking at the historic file that's been given to me by your lawyers in the Pennsylvania State Police. I can't find where these changes were made, what they were, if anything was added. Did you make any corrections that the front office recommended? If I'm 11 understanding what happened here, they sent it back with questions but they had no recommended changes then. Is that right? 14 A: Correct. 15 Q: Okay. So everything that you had sent 16 over there, on or about... Who's Sharon? 17 A: Sharon is the Major's secretary in the 18 Bureau of Research and Development. Sharon 19 20 Alstop. Q: Okay, Estep or Alstop, whatever you 21 told me. Now, you know here's where I'm having, 22 it's a little sort of a gap here. It says resubmitted to front office. It didn't tell me when it went to front

chould that he there? Did

1	office in the first place. Should that so there
2	somebody leave that out by error or something?
3	A: I wouldn't know that. When I submit
4	the projects and they go through.
5	Q: Yes
6	A: When it receives the Major's
7	approval, the Major's office forwards it. Sharon has
8	a log.
9	Q: Okay
0	A: That she keeps of correspondence in
11	and out.
12	Q: All right. So it could have gone over
13	there without you knowing.
14	A: Right. I wouldn't know.
15	Q: Okay. But you remember it coming
16	back with questions and you remember talking to
17	Mary Bungo.
18	A: Yes
19	Q: To answer questions. Right?
20	A: Yes
21	Q: Okay. And that it was resubmitted on
22	February 22 to the front office. Right?
23	A: That's when I took it over and
24	discussed it with her and answered her questions.
25	Q: But you didn't discuss sub-section C?

64

whatever you're referring to if you'll just produce it for the witness to see. MR BAILEY: Now Corporal tell me, you and Sergeant Margeson talked about the need for AR1 for accreditation purposes. WILLIAM MCAVEARY: AR1-1 yes. Q: AR1-1, Okay. Well tell me about 7 those discussions. 8 A: I'm, that the discussion that AR1-1 9 needed to be signed and out for accreditation. 10 Q: And sub-section C was part of that 11 needed for accreditation. Because I think, you know, I think there is going to be an issue about it whether 13 a federal judge thought that there was a need for subsection C. But your telling us that, I want to ask 15 you, did you and Sergeant Margeson talk about the need for sub-section C in the scheme of, in a context 17 of AR1-1 being needed for accreditation? 18 A: I'm not sure I understand the scope of 19 the question. Are you asking, was sub-section C 20 necessary for accreditation? 21 Q: Yes 22 A: We did not discuss that sub-section C 23 was necessary for accreditation. 24

A: She didn't have any questions about 2 that. Q: Sub-section C was really important because of accreditation? Did you need it for accreditation? Did the Pennsylvania... A: Oh I'm sorry. I don't know that it 6 was a project required for accreditation. Q: Sergeant Margeson didn't tell you 8 9 that? A: I don't recall that being part of our 10 conversation. 11 Q: Sir, I may be mistaken but I think I 12 have in black and white from your lawyers that it 13 was necessary and important for accreditation. Now you, I don't know if I'm right about that. I need you 15 to clarify something. 16 BARBARA CHRISTI: Before the witness 17 answers if you're going to state what you have from 18 the lawyers then I ask that you produce it for the 19 witness to see because my recollection is, if you're 20 talking about the affidavit of Sergeant Margeson, 21 that Sergeant Margeson indicated that the entire AR1-1. Not sub-section C or any portion thereof 23 was needed to be completed and processed for accreditation purposes. But you know, I'll stand by

65

Q: Okay, that's good enough. Now, on February 22, 2001, 12:35 p.m., AR1-1 was resubmitted to the front office. Correct? A: Yes Q: Okay. Now, when did you go over and sign it with Mary Bungo? A: I did not sign it. That would have been the twenty-second. Then would have been when I took it over to Mary Bungo to see about her auestions. 10 Q: And, so February 22, is when the 1.1 Commissioner's signature was add by autopen. 12 A: Yes 13 Q: And, you witnessed that. 14 A: Yes. The auto-penning. 15 Q: So, now bear with me on these 16 questions sir, if you will. Okay? If you're going 17 over to the front office, had you gone over to the front office prior to the February 23,2001 to have 19 things signed? Or is this a first for you? Let me repeat the question so I make it clear okay. You 21 want me to try to break it down, is it ... 22 A: I'm just trying to think so I can give 23 an accurate answer.

Q: Oh, I'm sorry sir. I thought the
question was.
A: I don't recall personally picking
projects that were prior to that.
Q: Well were you personally requested to
come over on this one?
A: No
Q: How did you come up? Did you just
need a break? I'm not being facetious, it happens,
it's a lot of stress in these kind of jobs and you
know.
A: No. The AR1-1 was a priority project.
The entire project. For accreditation.
Q: Okay.
A: So I took it over personally to see
about the questions that see about the questions that
she had on there.
Q: Yes
A: So that we could get this through the
process and out the field as quickly as possible.
Q: Sir, are you saying, please pay
attention to this please, it's very important. Are you
telling us that AR1-1 as it existed, because I've
already researched this and I honestly, you know, I,
it's really confounding me. Are you testifying here

1	Q: It would have been, you know, from
2	when, you know from when you were assigned to it
3	until you went over to have it signed.
4	A: At some point there was an urgency.
5	Yes.
6	Q: Oh, at some point there was an
7	urgency. Before or after sub-section C popped up?
8	A: I honestly don't recall.
9	Q: Don't remember?
10	BARBARA CHRISTI: Counsel?
11	MR BAILEY: Yes
12	BARBARA CHRISTI: Kids would like a
13	five-minute break or so. Can we break?
14	MR BAILEY: I tell you what. You know
15	it would help me out if you let me just, I can just
16	finish section here. Couple minutes. Would that be
17	okay? Or do you need it immediately?
18	BARBARA CHRISTI: I think the witness
19	would prefer it before the question.
20	MR BAILEY: Okay, well I'm going to
21	caution everybody. Generally, I don't object to this
22	but want no discussion with counsel in the middle of
23	this deposition. None. Okay.
24	BARBARA CHRISTI: Well excuse me
25	counsel but I thing that

1	today that AR1-1 as it existed in it's July 1997 form
2	was an obstacle to accreditation. Is that what your
3	telling us?
4	A: I don't know that I can speak exactly
5	what's needed of accreditation. I'm not involved in
6	that area.
7	Q: Who told you that, who first told you
8	that AR1-1 was needed for accreditation?
9	A: That would have been Sergeant
10	Margeson.
11	Q: And do you remember when he first
12	told you that Corporal?
13	A: I don't remember exactly when we
14	first told me that.
15	Q: Would it have been after the project
16	was assigned to you though?
17	A: Yes
18	Q: I would assume. That's only
19	reasonable that it would have been after that. Right?
20	A: Yes
21	Q: Did he tell you there was urgency of
22	getting it done?
23	A: When it was first assigned? Or when
24	was working on it during this time frame that you're
25	questioning about?

1	MR BAILEY: No, well I make it you
2	know
3	BARBARA CHRISTI: entitled to confer
4	with counsel at any point and time during the
5	deposition.
6	MR BAILEY: Actually, that's not
7	correct. I just want to note my objection for the
8	record in this case. Okay? It's all right, you go
9	ahead and do what you want to do, but you know
10	we'll, would you please suspend.
11	ALBERT RODRIGUEZ: The time 10:49
12	a.m. Suspending the video.
13	MR BAILEY: Albert do you want to go
14	ahead and get it started.
15	ALBERT RODRIGUEZ: Ladies and
16	gentlemen please be advised we're coming on video.
17	Video recording is now on. Time now is 11:01.
18	MR BAILEY: All right. Mr. McAveary,
19	you notice that doc. might, you have previously
20	identified and document that I did mark here, like to
21	have marked as "McAveary One" and it is the project
22	tracking summery, as I know it to be. Eight pages, I
23	don't know if there's more to it or not, to be honest
24	with you. But it's copies that were made when I did
25	a document inspection. And so I would liked to have

it marked. It is marked and I will give it to the video people. Now, the, I'd asked you, how many times, how did you come to go over to Mary Bungo to get this thing signed. WILLIAM MCAVEARY: As I said, we 5 were trying to get the project approved for the upcoming accreditation. So I took it over to answer 7 any questions she might have and get it through the Q: Who told you that, was it Mr. 10 Margeson that told you that there was some kind of 11 urgency to this accreditation thing? 12 A: That the project was needed for 13 accreditation. Yes. 14 Q: Do you know how that process of 15 accreditation occurs? 16 A: Generally, not in great detail. 17 Q: Well, do you know what's required, 18 whether it requires a process, or whether it requires 19 and process that can deal with compliance or change, 20 or whether you have to meet certain basic 21 requirements in the substance of your table of 22 organization? 23 A: I wouldn't know anything like that. 24

72

Q: Well, who told you go over there and

do this. Somebody had to tell you. You didn't do it on your own. A: Nobody told me to go over there. O: Nobody told you? A: No sir. O: Well how do know it was going to happen? A: I didn't know that it was going to happen. I went over answer Ms. Bungo's questions 10 that she had on the project. 11 Q: Oh, okay you went over to handle her, 12 answer her questions on the project and she auto-13 signed it in front of you? 14 A: Yes, after we had discussed her 15 questions. 16 Q: Well do you know if the commissioner 17 ever approved of these changes? 18 A: I really can't speak about the 19 commissioner's duties or what he knows. 20 Q: Well did you ask Ms. Bungo if the 21 commissioner approved this? 22 A: No I did not. 23 Q: Well you're the project officer. I 24 assume you would want to know if the, here's this

Q: Okay, so you don't know what this, you were led to believe that the substance of AR! had to be changed in order to meet accreditation. A: Yes. Because at the time AR1-1 did 5 not match the department. Q: How, in what way? A: Well, as I said, you know, you use the 8 personnel example, there was different divisions, I believe the last AR change only had three divisions 10 listed. For the Bureau of Personnel. There was four 11 now with different names. Q: But as you sit hear today and we 13 understand that you and Mr. Margeson didn't discuss 14 it. There are no facts known to you, which would 15 indicate that sub-section C had anything to do with 16 that accreditation project or process. Isn't that 17 18 A: Not that I'm aware of. 19 Q: Okay. Now, let's go back to the auto-20 penning. Do you ever, was this the first time you'd 21 ever gone over to the front office to get something 22 23 signed? A: I believe this was.

73

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secretary in the office, I mean you weren't violating sub-section C were you? There's not a chain of command problem here is there? Do you out rank Mary Bungo? A: That would be a question I can't answer. Q: Is she a civilian employee in the 6 department? 8 A: Yes she is. Q: You don't know whether you out rank 9 10 A: Certain civilian positions within the her? 11 12 department hold authority. Q: Well, where is the authority in, did 13 you before; she's here signing a document with the 14 commissioners signature on it. Did you ever 15 ascertain what role she filled or played in the table 16 of organization to have that kind of authority? 17 A: Well that would be between her and 18 the commissioner. Whether or not he gives her that 19 20 Q: Well, wouldn't it be between the 21 regulations, which, aren't the regulations above the 22 commissioner? I mean, the laws and regulations in this country are above people that hold positions. I 24

w	ould assume that ARI controls what the ommissioner does and not vice-versa. I could be trong, but isn't that so? A: I'm not sure I understand. Q: Does the commissioner have a right to violate ARI when he wants to?
7	A: No
B	Q: Does Mary Bungo have a right to
9 .	violate AR1 when she wants to?
0	A. No
1	Q: Do you have a right to violate AR1
.2	when you want to?
13 14 15	A: No Q: Did you ask Mary Bungo on whose authority she was affixing the commissioners signature to the, to these proposed changes, I believe
16	
17	866. A: No
18	Q: All right. But it was, but in fairness
19	to you in kind of situation, you were assuming that.
20	to you in kind of situation, you were
21	she had the commissioner's authority. Is that
22	correct?
22	A: Yes

76

Q: Do you know whether the

commissioner testified in his deposition that he had

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Q: Well, look at it with those handsome eyes of yours, just look at it and see the signatures that was on it. You know, observe it. 3 A: Yes Q: The way, I mean it's in our hand, 5 conditions, there's light and everything, you look at it, you see it and you see the signature there, and it 7 was the, I'm sure you looked at it to see if it was the commissioners signature. A: Yes 10 Q: All right. Do you remember whether 11 the ink was wet or dry right away or anything, the 12 condition of the document. 13 A: No, I don't recall. 14 Q: And how many of those did she 15 autopen sir? 16 A: It's one. It's the change sheet. 17 Q: Is that right? So you observed Mary 18 Bungo sign one change sheet in front of you. Right? 19 A: Yes 2.0 Q: Did you observe Mary Bungo sign 21 more than one change sheet? 22 A: No 23

no knowledge at all of sub-section C or what it was about? A: I don't see how possibly know what the commissioner testified to in his deposition. 3 Q: Well, I'm wondering if someone told 5 6 you. Q: Okay. Now what did you do with that, 7 when you got that off the autopen. Do you 8 remember, do you remember what the signature was like, in other words was it signed like a, was it a fiber pen that's used, is it an ink-jet, do you know 11 how the machine, did you look at the machine? A: I saw it, but really didn't take note of 13 14 what kind of pen was in there. 15 Q: Is it ink-jet or do you know... A: As I said, I didn't take note of what 16 17 kind of pen was in there. Q: Well you were concerned that the ink 18 be dry weren't you. You know, you don't smearing, 19 I mean usually you get a document like that fresh 20 off, you know. Let me go back again, make sure that 21 we cover this. Did you look at the document at all 23 when Mary Bungo gave it to you? 24 A: Look at it how?

Q: Well how many change, signed change sheets were there in the historic file when you looked at it? A: I don't recall. Q: Well, sir isn't it fair to say that you're the guy that had that change sheet. You took it back and you put it in the historic file. Right? A: Actually, when I took back signed. I have to give it to Pam who does the reproduction 10 order. Q: Okay 11 A: Regulation with the change sheet 12 attached. 13 14 Q: I see. Did Pam have another signed 15 change sheet? A: Not that I'm aware of. 16 Q: Well, do you know any reason why the 17 commissioner would sign more than one change 18 19 sheet? Well, actually we know he didn't sign any because he told us that. That's his testimony. How 20 many change sheets do you get signed. 21 22 A: Normally just one. Q: So you didn't play any roll in signing 23 24 more than one change sheet. Did you? 25 A: I don't recall.

to you sir that I got of that from the historic file and

1	Q: You don't have any recollection of
2	there being more than one. Do you?
3	A: No
4	Q: And the one change sheet that you
5	I'm going to try and find here a couple of signed
6	copies, of a couple of signed change sheets. Now
7	see if you can tell me which one you saw. Okay?
8	That you got from Mary Bungo on February 22,
9.	2001. The other one the signature is up higher.
10	Could you take a look at this sir?
11	BARBARA CHRISTI: Are you marking
12	this counsel? Is this "McAveary Two?"
13	MR BAILEY: I'd be happy to mark it for
14	you. Does that look familiar to you?
15	WILLIAM MCAVEARY: It looks like
16	a
17	Q: Before I ask you that question, in
18	fairness to you. What I'm looking for is just a
19	recollection. I don't expect you to be able to
20	identify it, you know, after this time. Is that familiar

I got a copy of another piece of paper just like that from the historic file that was done on a different machine, different typing obviously, mentions the same change, and it's auto-penned. It appears to be auto-penned but the signature in a different place. I'm telling you, that's why I'm asking you these questions, if you have recollection of that. Okay? Did you have recollection of seeing something like that? Can you be certain whether that's the one you 10 saw? You don't know? A: I couldn't be certain. 12 Q: Okay, that's fair enough. It's been 13 quite some time. Right? Is that fair to say? 14 A: Yes 15 Q: Now sir, have you ever had any 16 experiences with change sheets coming back from 17 the front office and the ink not being completely dry 18 more than a year later. Have you ever had that 19 20 happen? A: I wouldn't see the change sheets a 21 22 year later.

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with you in the sense that it looks like the change

sheet that was signed or do you have any reason to

believe it's not the one? Let me do it this way. It's

want to ask you an unfair question. I will represent

awkward because I don't think, you know, I don't

Q: But in terms of autopen signatures of your own experiences, you don't know if the ink takes more than a year to dry. 3 A: I'm not aware of that, no. Q: Okay. Please return that to me and I'll see if I can find the other one. Counsel is aware it, we pointed out to them on that day but I don't think it's fair to you... BABARA CHRISTI: I'm sorry counsel, 10 excuse me. Can we just mark that one before you 11 produce or look for the other one? 12 MR BAILEY: Well let me hold it here until we can find the other one and then we'll redo it. 13 14 Okay? But they are the two documents I showed that day when you were doing the document inspection. 15 16 On the, my understanding is that from your sheet 17 here, that on... there's something odd. I just want to ask you about something. Okay? If you go back to 18 19 the first page of "McAveary One" it says on 01-19-20 01, 10:35 it was resubmitted to Sharon. See that? WILLIAM MCAVEARY: Yes 21 22 Q: You don't know if Sharon sent it back 23 to the front office, how long it took her to send it.

Q: Okay

A: Normally.

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23

24

O: Yes A: No 2 Q: I want to show you this document, if you can help me, help sort these things out. Could you take a look at those two forms for me? And have those marked as, the one that says sent January 22 as "McAveary Two", and the other one as "McAveary Three." BARBARA CHRISTI: Which one is 10 "McAveary Two?" MR BAILEY: The one that says sent 11 January 22nd. Now I saw the agitation in co-counsel 12 Reynolds. At some concern. If there's a concern I 13 do have that second copy. Now if there's some concern about doing that first, I don't mind. 15 JOANNA REYNOLDS: The only concern 16 I had counsel is that if you show a document to the 17 witness. It should be marked. And I don't want, 18 because you already indicated that there were two 19 20 change sheets so I don't want you to show you a change sheet then substitute another change sheet then we don't know what change sheet was shown to

23 him and the fact that there are two so...

24 25 Right?

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A: After I had resubmitted it to her?

MR BAILEY: Okay, let's do this. Can you return those to me right now and we're going those next. 3 BARBARA CHRISTI: Are you canceling 4 5 out McAveary two and three? MR BAILEY: No, you can mark them two and three. Let's clean it up this way since you've 7 marked those. 8 BARBARA CHRISTI: All right. 9 MR BAILEY: Now counsel expressed 10 some ... you can set them right there sir... Counsel 11 expressed some concern about the, incidentally those 12 documents there, two and three are not change 13 sheets. But here are two changes sheets. I'm going 14 15 to give this back to you sir. Okay? And I want you to look at these and please. And I would like them 16 17 marked "Four" and "Five." Now, for purposes of 18 four and five. We'll mark number four, one of them say through sixty-eight? And one of them say 19 20 through sixty-six? OPPOSING COUNSEL: Yes for inserting 21 22 the pages. 23 MR BAILEY: Okay, and would you want to mark those Barbara. 24

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Q: Would you agree with me where it

says change number 866, and change number 866,

3 and the date were typed on different machines. A: Yes Q: Okay. Can you explain what they, 6 why there's two different changes? Did see just one 7 of those things signed? Do you know which one? 8 9 Q: Which one did you see signed? 10 A: I can't tell you which one I saw 11 signed. 12 Q: Why are there two? 13 A: I can't explain that. 14 Q: If I told you that the ink was wet on those and not completely dry on those based on my 15 observations over a year later. If you, and again, 16 17 you may not have any familiarity with the autopen 18 signatures from the commissioners office. Could 19 you explain that to me? 20 A: No, I could not. 21 Q: Now what that change order is all 22 about is they're instructions that go with the proposed change to the AR that goes out in a 23 24 distribution and says take these pages out the AR manual, which is usually on a ring binder. Right?

BARBARA CHRISTI: Yes, which one are you marking the one through sixty-six as four? MR BAILEY: Let's see with one. You the what, the way I identify them is one with the close signature and the one with the far signature so we're going take the one that says one through sixeight will be four, and the one that says one through sixty-six as five. Sir can you explain the difference in those two documents to me? If it has any meaning to you. In fairness to you, it may not. But would 10 you explain it to me? You mind if I look over your 11 shoulder while you do that? WILLIAM MCAVEARY: No. 13 Q: Okay. Thanks. 14 A: You mean like what differences exist 15 16 between the two or ... 17 O: Well I don't think you need to tell us 18 the different, can you explain them for me? 19 A: Explain them how? 20 Q: Are they two different documents? 21 A: It's essentially the same document but 22 with differences on the two form of it. 23 Q: Okay, what date do they have on 24 them?

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A: They both have February 23, 2001.

2 Q: And it says insert these new changes 3 in there. Right? 4 A: Yes Q: Okay. Do you know if there's any 5 relationship between those two documents and subsection C that we've been discussing? A: No, not to my knowledge. 8 q Q: You don't know one way or another? 10 A: No 11 Q: All right. Sir, could you set those aside, well just actually, put them up in front of you, 12 13 put them up there, and then take these two documents here which are "McAveary Two" and 14 15 "McAveary Three." Now one of those documents has a date sent of January 22,2001 and then one has a 16 17 date sent of February 17, 2000? Do you see that? 18 A: Yes 19 Q: And what is the regu.. Can you...I 20 mean... I don't understand those two documents if I, I mean...are they different projects? Are they dealing 21 with AR1-1? What are they about? Do you know? 22 A: Well, they're the project route slip for 23 24 the AR1-1 project. 25 Q: Okay.

A: This, as I said AR1-1 was an ongoing 2 project ... 3 Q: Right 4 A: For a couple of years. This was a route slip prior to my receiving the project. 6 BARBARA CHRISTI: For this, which 7 number are you referring to? MR BAILEY: That's number five. Or 9 number three. 10 WILLIAM MCAVEARY: And it has Corporal Robert F. Kelly's name on it as one of the 11 12 contact people. Q: Right. Now the one has penned in on 13 14 the top up there. Change number 866. 15 Q: And that one has your name on it. 16 Right? 17 18 19 Q: And that one has a date up there of 20 10/30, which is October 30th of the year 2000. 21 Right? 22 A: Yes 23 Q: Now, who's initials? 24 A: That is Marie Marshall. 25 Q: And where does Marie Marshall work?

A: In the Bureau of Research and Q: Okay. And down at the bottom of "McAveary Two" I see something that has a date on it says 10/30 and then... Programming Division. What does that mean? A: Programming Division is the division I work in. O: Okav 10 A: Those are Sergeant Margeson's initials. That would have been when he reviewed it 11 12 and signed off on the regulation in forwarded to the 13 next person. 14 Q: Okay. And what does it have for the 15 date sent there? 16 A: Over here? 17 O: Yes 18 A: January 22, 2001. 19 Q: And then down below it says deputy 20 staff. Right? 21 A: Yes 22 Q: Is that Robert Hickus 123? 23 A: I would assume. 24 Q: Okay and underneath that who's that

one under there? Deputy Operations.

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A: I would assume... 1 Q: Is that Mr. Westcott, do you know. Is 3 that Mr. Coury? Do you know that is? 4 A: No, I don't know. 5 Q: Deputy of the Administration. Do you 6 know those initials? 7 A: No Q: But as the date there under Deputy of 8 Administration, 2/12. Do you see that? 10 11 Q: Now look over in the left at the x's. 12 Do you see that? 13 A: Yes 14 Q: Do you know when those are placed in 15 those boxes? 16 A: The x's? 17 Q: Yes 18 A: Yes I do. 19 Q: And is that placed in there to indicate 20 where the document should be routed? Where it's 21 supposed to be sent. 22 A: Yes 23 Q: Okay. Now, over on "McAveary 24 Three" under the x's it has numbers 3,3,and 3. Do

you see that?

2 Q: And, it has Deputy Staff and it says, RCH. Is that Hickus? A: Again, I would assume. Q: Okay. And then it has an x Director Bureau of R and D. Do you see that reference? A: Yes Q: Okay, yes. Can you explain why in the one case we're going through all Deputy 10 Administrators or Deputy, you know the Lieutenant Colonel's, the group of Deputy Administrators, and 12 why in the other case it's to Mr. Hickus and the back over, in the case of the Kelly project? 13 14 A: I wouldn't know. That was prior to 15 my being assigned to the project. 16 Q: Do don't know why that's different or 17 what that's for? 18 A: No sir. 19 Q: Okay, okay. Let me have those back and let me look at them one more minute and see if I 20 21 have questions on them. Okay? I'll hand them right back to you. You know what page or where sub-22 23 section D appears? 24

A: Where sub-section D appears?

Q: Yes. Sub -section C, I'm sorry, the AR1-1.02? 3 A: No, not off the top of my head. I 4 don't. 5 Q: Okay. I want to ask you something 6 Corporal, do you, these change sheets. Who types 7 8 A: The change sheet is done as part of 9 the project by the project person. In this case it would have been me. It's done on a computer. 10 11 Q: Did you type these? McAveary four 12 and five. Did you type them? 13 A: They look like the change sheets that 14 were done for the project, I don't ... 15 Q: Change sheets... underline "S" plural. 16. A: Well you have two change sheets there 17 sir. 18 Q: And I have two autopen signatures, 19 they're exactly the same, and you submitted one. You say you don't know where the second one came 20 21 from. They have the same date. And I'm just asking if you have different typewriters or different, you 22 23 know. 24 A: The date is not on there when the change sheet is submitted with a project.

now, Corporal you sit there till he shuts the deposition down. Then we're done. WILLIAM MCAVEARY: Okay ALBERT RODRIGUEZ: Okay, It is now 11:30 a.m. The deposition of Corporal McAveary is completed. 7 8 9 10 11 12 13 15 16 17 ,18 19 20 21 22 23 24

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1	Q: Who puts it on?
2	A: Pam does, Miss Yandridge, As well
3	as change number.
4	Q: Okay. I'm going to leave the Rec.
5	Room. Darrell to do want to step out for just a
6	minute? Barb could you make me copies of those
7	exhibits.
8	BARBARA CHRISTI: Sure
9	MR BAILEY: I don't have any other
10	questions. I'd like to thank you Corporal, it's never
11	pleasant witness. I would to express my appreciation
12	for the courtesy that you've shown me and coming in
13	here today to answer questions. Thank you. Yes sir.
14	BARBARA CHRISTI: Do you want to
15	take a break counsel so I can make these copies then
16	that you may need them for the next witness or what
17	do you suggest.
18	MR BAILEY: Yes, well we all need
9	copies for our files and then I got to give him one so.
20	BARBARA CHRISTI: All right so we'll
21	make set of these, also a set of copies of these eight
22	pages of "McAveary One."
23	MR BAILEY: I don't to do that one.
4	Caption Brown has already done those. I think right

93

Project Tracking Summary

Project No.: 2000 0547 Orig, Source: RD

Contact Person:

priority: 🗵

Date Assigned: 10/10/2000 Date Due: 10/31/2000 Assigned To: MCAREAVY, W Index Code:

Date Signed:

Date Signed:					
Subject: AR I-I RESUBMISSION					
DATE/TIME .		REMARKS			
77-	2	RELENCO AND REVIEWED			
10/10/00	0400	CHECKED WITH ROSE POLEK, STAN BURKHOLDER			
	0,100-01/7	PRENDA ESTEP, AND SHAWNER SMITH			
		CONXERNIALS CHANGES TO BURET OF			
		COAKERNING CHANGES TO STEED TO			
		PERSONNEL IN AR 1-1. WILL ATTEMPT TO			
	`	LOCATE NEW SECTIONS.			
12/1/20	1515	RECEIVED APPROPRIETS NEW SECTIONS			
10/10/	-	FROM IT. BENEDICK.			
1. /20/10	1250	CHRMITTED TO PAM.			
10/00/00-		OSCUPLITIFO TO SHARON.			
21/27/01	1:171	RESIVED BACK FOR CORRECTIONS			
03/13/01	_	OCCUPATION TO FRONT OFFICE.			
02/22/4	کن <i>ک کے لیے</i> ۔۔۔۔	RECEIVED BASK SIGNED W/ REPRO ORDER.			
-2/27/c1_	0795	DELIVERED TO REPRO.			
		PIEKED UP FROM REPRO. DISTRIBUTED.			
13/16/20					
		PROJECT COMPLETED.			
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CYRSTAL LYDE: Good afternoon ladies

and gentlemen. Please be advise the video and

audio is in operation. My name is Crystal. M. Lyde, L-Y-D-E. My address is 4310 Hillsdale Road

contracted by PR Video Incorporated to be the operator for this deposition. The case is in the

Harrisburg Pennsylvania, 17112. I've been

John Pudliner

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER

1: CV-00-0084

Plaintiff

PAUL EVANKO, MARK CAMBELL, THOMAS COURY, JOSEPH WESTCOTT. HAWTHORNE CONLEY MS. REYNOLDS and SYNDI GUIDO, Et al. Defendants

ORIGINAL

DATE:

February 25, 2002

PROCEEDINGS:

Video Deposition of Wilfred Pudliner

APPEARANCES:

For the Plaintiff:

Donald Bailey, Esquire 4311 N. 6th Street Harrisburg, PA 17110

For the Defendant:

Joanna Reynolds, Esq. Barbara Christi, Esq. 1800 Elmerton Avenue. Harrisburg PA, 17110

MS. LYDE: Would you state your name

United State District Court for the Middle District of Pennsylvania. The caption is Darrell G. Ober vs. Paul Evanko, Mark Campbell, Thomas Coury, Joseph Westcott, and Hawthorne Conley. The docket number is 1: CV-01-0084. The date is 12 February 25, 2002. The deposition is being held at 13 the law office of Don Bailey, 4311 North 6th Street, Harrisburg Pennsylvania, 17110. The video 15 deposition is being taken on behave of plaintiff Darrell Ober. The witness's name is Major Pudliner. 18 19 MR. PUDLINER: That the way most people pronounce it. I pronounce it (pood-line-er), 20 but Pudliner is fine. 21 LYDE: Okay the time is 1:02 p.m. 22 Would you raise your right hand for me please? 23 24 MR PUDLINER: Yes

for the record, your full name, and spell it please? 2 MR PUDLINER: My full name is Wilfred W-I-L-F-R-E-D, John J-O-H-N, Pudliner P-U-D-L-I-N-E-R, Junior. MS. LYDE: Do you so swear to tell the whole truth, and nothing but the truth so help you MR PUDLINER: I do MS. LYDE: Thank you. Mr. Bailey can 10 we have a sound check around the room please? 11 MR BAILEY: Yes, my name is Don 12 Bailey. I'm an attorney. I represent the plaintiff, 13 Darrell G. Ober in this matter. Address 4311 14 North 6th Street, Harrisburg PA, 17110, and 717-15 221-9500. Ms. Reynolds? 16 17 MS. REYNOLDS: Ms. Reynolds, I'm assistant counsel with the Pennsylvania State 18 19 Police. I represent the defendants in this matter. My address is 1800 Elmerton Avenue, Harrisburg 20 PA, 17110. Phone number is 717-783-5568. 21 BARBARA CHRISTI: Barbara Christi, 22

Chief Counsel, Pennsylvania State Police. Same

address and telephone as those given by Assistant

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Counsel Reynolds.

MR BAILEY: Okay Major Pudliner, my name is Don Bailey as indicated and I'm an attorney here. We're going to be conducting a deposition. This is a video deposition so it's important to make sure we keep our voice up at all times etc. Very very simply instructions. If I step on the toes of one of your answers make sure that you correct me, and make sure you answer fully and completely so you get a complete answer in, that sort of thing. I don't mind you asking me what I mean by a question although this deposition 11 is probably going to be quite brief. I don't mind you asking me where I'm going with a group of 13 questions or where I'm going with a question or 14 what I mean by a particular question at all. Please feel free to do so. Take a break at anytime, but 16 17 again I don't think it's gonna last very long. You've done depositions before haven't you? 18 MR PUDLINER: Yes I've done depositions years ago. It's many years since I've 20 done any, but I've testified at many of arbitration 21 22 hearings. 23 MR BAILEY: Okay, do you have any 24 questions for me?

MR PUDLINER: No sir I don't.

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MR BAILEY: Let's just get to it then. The usual stipulations? Objections reserved, except just to form of question, till time of trial. MS. REYNOLDS: Yes MR BAILEY: Okay. Major Pudliner I'm just gonna refer to you as Major. Is that okay just Major? MR PUDLINER: Major's fine. John's 8 fine. 9 MR BAILEY: Major, in what capacity do 10 you serve with the Pennsylvania State Police 11 today? 12 13 A: I'm currently the Director of the Bureau of Professional Responsibility. 15 Q: And how long have you served in that capacity? 16 17 Since September 2nd of 2000. Q: Now in the capacity of...just very 18 19 briefly tell us what you do as Director of BPR. 20 As a Director of the Bureau of Professional Responsibility I oversee two divisions. 21 The Internal Affairs Division and also the Systems 23 and Process Review Division. Q: Now, how long have you served in 24

them through the Governor's Office. We get them
by telephone. We get them by letter. Normally
what we do if we receive one that's not a signed
document, then we send out a complaint
verification form.

Q: That's what I'm talking about, a

the Pennsylvania State Police?

Q: That's what I'm talking about, a complaint verification form.

A: Okay. We send out a complaint verification form to that individual. Ask them to give us details of the circumstances of what their complaint is, and to sign that complaint verification form and send it back in.

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Q: Well that's done no matter who... I
mean if the President of the United States
complained you'd ask for a complaint verification
form, because it's part of your process isn't it?

A: We would either ask for it initially.

A: We would either ask for it initially or when the investigator went out we would ask him at that point to sign a complaint verification form, yes.

Q: We'll the investigator, but that investigator would be known to you. I mean, whether it came by the virtue of a Troop
Commander or whether it came by virtue of the internal procedures of BPR, you'd know who that

I just completed thirty years on January 27th of this year. During that period of time, have you had occasions to be appointed as an investigator? A: Yes Well if you're an appointed O: investigator who appoints you? I mean is it the Commissioner, the Deputy Commissioners, the ıο BPR? Who appoints BPR investigators? ł 1 A: The ultimate responsibility for overseeing the investigations is the Director of the 12 13 Bureau of Professional Responsibility, but often times as a Troop Commander I would appoint the investigator and call BPR and say, okay Corporal 15 Jones is going to be the investigator on this. It's 16 done at various levels, but basically with the approval of the Director of BPR. 18 Q: Okay, when an investigation is

Q: Okay, when an investigation is contemplated how is it initiated? In other words, if somebody wants investigated do they just call you up or do they fill out a complaint or fill out a form. Is there a form process?

A: Well actually we get complaints in many ways. We get then through e-mail. We get

investigator was and you would ask them to get that paperwork completed as part of them doing their job, right?

A: Yes, it would be part of the process.

Q: Absolutely. Now let me ask you, do
 you have any familiarity with the investigation into
 Captain Ober? Any BPR in relationship to Captain
 Ober.

9 A: Direct knowledge of any, no. I
10 know that obviously going on right now, and
11 there's an attorney work product being done.
12 Other then that I have no direct knowledge of
13 what's occurring.

Q: So you never been involved in any investigation of Captain Ober about the subject of this lawsuit, anything to do with that? Have you?

A: Involved? I mean I'm involved here

A: Involved? I mean I'm involved here
today as being deposed, but I've conducted an
investigation on Captain Ober. I don't believe I've
ever been interview as a witness or a complainant
in any investigation involving Captain Ober.

Q: That's what I mean. Aside from administrative duties as by virtue of your position with BPR, you have not been involved as an

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investigator or a fact witness in any BPRs regarding Captain Ober.

A: That's correct

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Q: As Director of BPR, any open BPRs on Captain Ober as we sit here today?

A: There would be an attorney work product that's associated with the lawsuit, but other then that I'm not aware of any.

Q; Well the attorney work product that's part of this lawsuit, that's not part of a BPR about that had to do with whether or not Captain Ober should have or did report an FBI investigation directly to the Commissioner. It's not the same thing.

Well the two intermingled from what I understand, the lawsuit and that. I don't know of any investigation that open on Captain Ober dealing with his, I forget how you'd phrased it, dealing with the FBI reporting an incident to

Q: Yeah if there is an attorney work product thing that's something that would have been initiated after he filed his lawsuit, right?

That's correct

As far as I know, yes.

Who keeps the records on the attorney work product you or the attorney?

When you say the records, the actual report that is done?

Q: Yeah. I mean I assume this is a privileged creature.

A: Actually on the attorney work product there's a copy maintained at BPR. There is a copy also furnished to Chief Counsel.

Q: Well we just had some testimony here earlier, by on of your predecessors, that 12 there's limited access to a BPR file, right?

> A: Yes

Q: But that certainly the 15

Commissioner has access, right? The Commissioner would certainly 17 A: have access, yes. If he called me and wanted to see a particular BPR, yes he would have access to 19 20

So the Commissioner has access 21 O: to the attorney work product file? 22

If he requests it, I would imagine. I can't speak for the attorney's side, but

Q: No, no.

I always been fascinated by the Pennsylvania State Police and the attorney work product deal. You know, but that's maybe a legal issue for another day. As far as the... Was there ever a BPR that was begun on Captain Ober on the issue involving the reporting the FBI investigation? I don't know sir Q: Well, so if there was one are you telling us it would have been closed by now? Or you tell us that it might still be open? Their might one still be open. 13 12 I don't know of any being initiated since I got their September 2nd of the year 2000. Whether or not there are any out there from 14 previous I have no idea.

> Q: Okay

> > A: I don't know

You didn't look at the BPRs 18 regarding Ober before we came over here today? 19

No sir I did not.

Okay. Now, so at least since you 21 have been the head of BPR no BPRs on Ober have 22 23 been closed. The only thing that's happened during your ten-year is that a "attorney work product" has been opened. Is that right?

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A: If the Commissioner called and said I want to see all the BPRs on Major Pudliner, we would dig out all the BPRs on Major Pudliner and send them to the Commissioner, Q: Yeah, but this is litigation. This is attorney work product, right? A: Q: And it's privileged so whatever the means to you. Anyway how about Joe Westcott, Hawthorne Conley, Mark Thomas do they have access? Mark Thomas is in the Governor's Office. Does he have access to the attorney work product? MS. REYNOLDS: Do you Mark 13 Campbell? 14 MR BAILEY: Yeah Mark Campbell. 15 What did I sav? BARBARA CHRISTI: Mark Thomas or 17 Thompson

MR BAILEY: Oh gees where'd I get that? MR PUDLINER: Mark Campbell or Mark Thomas, neither would have access to them from

Okay, but the Commissioner would?

Yes the Commissioner would.

Q: By virtue of his being Commissioner? 2 A: Q: Now, and that would that would go for Mr. Coury would have. Is Mr. Westcott still with the State Police? He retired isn't he? Yeah. A: No sir. He's retired. Yeah, he wouldn't have access then. No sir 10 Q: If you, you've been in the State 11 Police how long? 12 A: Thirty years 13 Thirty years, have you seen incises 14 where the Commissioner or a Deputy 15 Commissioner have assigned investigators to go out and investigate people and read them their 17 rights? You've seen that before haven't you? 18 Yes sir, I have. 19 Q: And how many times have you 20 seen that? 21 A: We're going back thirty years. I've 22

Pennsylvania State Policemen or criminal

allegations?

really couldn't give you a specific number. I know

that there have been times where we've had people

detached. In fact when I worked in Troop A. We

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The purpose of it in regulation just refers to investigation. Our main purpose is to conduct administrative investigations, and also any other investigation that are requested by the Commissioner. So the Commissioner does an investigation he doesn't have to fill out a 10 verification form? I depends on what your talking, if 11 there is going to be a full investigation done, 12 13 somebody is going to fill out a complaint verification form and we're going to do SP 101 or 14 we call it a worksheet, a complaint processing 15 worksheet. If it's an inquiry there may not be a 16 17 worksheet done. 18 Q: What's an inquiry as opposed to an 19 investigation? 20 A: Well an inquiry can be anything. It could be like, who drove that car last night on that shift and didn't fill it up with gasoline at the 22 end of the shift. Or we do what we term supervisor 23

inquiry is when a complaint will right in. Often

times you can tell it's just a disgruntled motorist

had two people detached to the Commissioner's office to do an investigation. Q: Into somebody? A: Yes, into an individual, yes. And was that run through BPR? O: No it was a criminal investigation. Oh okay. A criminal investigation? Q: Do you know whether Captain Ober's ever been investigated for criminal 11 activities? 12 A: I don't know. Q: BRP isn't for conducting criminal 13 investigations is it? 14 15 A: We sometimes conduct criminal investigation. We try to stay away from that part of 16 it, but sometimes we do get involved in the 17 criminal aspect of it. 18 Well the only opportunity I see to 19 see a BPR investigation if there's a criminal 20 allegation made it's referred to a Prosecutor for 21 evaluation. 22 23 That's correct Okay. Well what's the purpose of BPR? To investigate allegations of misconduct as a

who received a traffic citation or whatever and they're unhappy that they received citation. We'll do an inquiry. Have the supervisor do an inquiry who they intern give to the Troop Commander and the Troop Commander makes a determination as to whether or not we should do a full investigation. Or whether or not we should terminate it at that Q: Well that's when you're evaluating an investigation, whether to go forward with an investigation or not. 12 Whether or not to go forward with 13 one, yes. 14 Yeah that's what I mean. In other words, I mean, once you decide to go forward with 15 an investigation there's a number assigned and you go through the procedures that the regulations 17 call for. I assume. A: Yes 19 Of Course Q: A: Yes Now criminal investigations the

State Police are conducting aside. I assume that

you probably conduct criminal investigations all

the time, right? I mean...

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BPR it's self? A:

> Q: No, no the State Police

A: Oh, State Police, yeah

Absolutely. It's part of one of the O:

major jobs, I assume.

A:

0: A major function that you would

perform. Now when you're looking into an officer,

one of you collages that you may have a duty to do.

That complaint process can be initiated by 10

anybody at any level by sending a complaint in. Is п

that correct? 12

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A: That's correct

Q: And they can send it in maybe it's

one of their superiors that might refer it. They can

send it directly to BPR, right? 16

Yeah, there's certain circumstances

where they can direct to BPR. 18

Q: And what if you determine that

there isn't any actionable offence there? What do

21

A: We would probably send it out to

the Troop Commander for like a supervisory 23

inquiry. Determine the fact and give us your

25 recommendation as to whether or not we should

No, I think that is a pretty wide open question. It would depend on what behavior....

Q: It's a very wide open question, but the answer, I'm wondering if there's a definitive answer to it.

It depends if it is a criminal investigation, if it's administrative, it could be a 8 drug law investigation. In which case it would go to Drug Law. If it was criminal it would go to BCI 11 or it could go out to the troop level to be investigated. If it was administrative it could be 13

done by the Bureau of Professional Responsibility or it could be assigned to members of the troop. 14

15 Well, no this is a case where the Commissioner and the Front Office assigned two 16

Majors to do an investigation into the Captain. 17

That's the situation complained about here. How 18

many situations have you seen with no BPR 19

20 number? It's not being done by BPR sir, okay, and

it's not being done by a trooper. How many of

those have you seen in your twenty some, thirty 22

years?

proceed with a full investigation or whether we

should close the matter. Then the Troop

Commander would make the recommendation and

send it in to us.

What regulations govern

administrative inquiries?

Administrative regulation 425 is A:

the main one.

425? O:

Yes A:

11 Q: It defines and expresses

administrative inquiries?

13 A: I don't know that it uses the term

inquiry in it. 14

Alright. What about the word Q:

16 administrative investigation?

17 I believe it defines administrative

and investigation as two separate words. I don't'

know that administrative investigation per say is

defined.

21

Q: Well regulations would govern two

investigators appointed by the Commissioner to 22

investigate somebody in the Pennsylvania State 23

Police? What regulation would govern their 24

conduct or behavior in dealing with that?

18

I'm not sure I understand what you're saying. You're saying two Majors were sent

to investigate a Captain.

Q: Right

A: Investigate or make an inquiry?

Well you know that's an

interesting term of art, investigate or make an

inquiry.

A: Yeah

Q: In all the anneals of law enforcement I don't who's be able to divide those

up and put orange icing on one and white icing on 12

the other. I don't know.

A: Well...

I'm asking you this. Do you know Q:

any situations where two investigators, in this case 16

two Majors, where directed/assigned and 17

investigation, which was managed by the Front

Office into a Captain and BPR was not given a 19

number or consulted on it? That's all. If you know

of anv. 21

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A: I don't know many administrative

investigations, full investigations that would have

been done.

Q: Okay. Now an administrative investigation is probably, I mean you're talking about something that in the normally course of business of the Pennsylvania State Police, probably go on a pretty regular basis. I mean that just means we're superiors checking something out I'd imagine. Right is that? An inquiry, yes O: An inquiry, now in your mind sir when does an inquiry yield to what you call, I think you referred to it full investigation? Ħ Well I think, for one thing we 12 13 document them differently, okay? Okay 14 O: 15 An inquiry would be documented on what we refer to as a "subject to/from letter". 16 Okay, and it would normally go form the 17 supervisor, from who ever was doing the inquiry, okay? 19 That's what I... 20 O: 21 To the person requesting the inquiry. 22 23 This is a supervisory inquiry, right? A: 24 Yes

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That's what I thought. Okay.

information. I can think of instances where I called troopers in and said why did you do this particular action. Q: A: And when I first heard what they did I was livid and I would talk to them and find out what they did. They would give me a complete justification for why they did things the way they did they, and I said okay that works for me. 10 Q: Yeah 11 A: It ended at that point with no number, no supervisory investigation, and full 12 13 investigation. Q: I think we're reading from the same 14 15 page. You got a situation where you as a supervisor are curious about something. You 16 17 bring the person in, or it may be the way someone's conducting an investigation. You have 18 a concern about plugging up a hole in an 19 investigation maybe, so why wasn't an interview done or something like that. 21 22 A: Yeah

You bring the person in and you

question them, and you say why did you do this,

Yeah I understand what you're saying now. So a supervisory inquiry is handled at a certain stage if it yields to a full investigation that's one thing. If it's resolved without the need for full investigation, then it's resolved. A: Yes Q: I wasn't quite sure when you talking inquiry. I was thinking in terms of the regulations also, and the word supervisory inquiry. 10 Okay 12 Q: Yeah, I do understand what you meant now. At first I didn't know what you meant, 13 because you weren't using the word supervisory I didn't know quite what you meant. 15 A: Okay 17 But it's the full term you're Q: referring to? 18 19 A: Yes, although there are inquiries 20 that don't amount to documentation. 21 Q: That was gonna be my next 22 question, yeah 23 Yeah, there are those that don't 24 amount to documentation. They're generally things where I just need to know a little bit more

Okay?

22

why did you do that, or what's the reason for this, right? A: Yes Q: Okav That would be one way of doing it. A: Now if you suspected there was a major violation of departmental regulations and that if the person violated those regulations there could be serious discipline then you're into doing the full investigation you talked about, right? Not necessarily, no. 11 Not that either? 12 o: No because I've already done the 13 inquiry into things. A specific example where we had people who were involved in selling lottery chances on a home. Okay not your normal pay two dollars, and you win one hundred if the number hits. They were chancing off a house, and we did further inquiry to make sure one, that it 20 was our personal that were actually involved and number two that there were actually involved. Before we initiated a full investigation. 22 Yeah that was to ascertain who Q: was involved.

It was ascertained who and in fact if they were involved. 2 Q: Right, but there wasn't any question that that wasn't your run of the mill

lottery.

Right A:

Not a run of the mill little small chance some two-dollar ticket jobs.

A:

Okay. What if you have a situation that it's clear to you there is no regulation 11 12

violated? What do you do then?

A: I'm not following you, because if 13 there is no regulation violated I don't know what I'd 14 be inquiring about. 15

Q: Me either, but you don't know of 16 situations where there was no regulation violated 17 and you just went ahead and investigated do you? 18 You've never done anything like that have you 19

Major?

23

A: Where I knew that there were no 21 regulations. Not that I can think of, no. 22

> Q: That wouldn't be right would it?

A: I can't say that, because I 'm 24 trying to think. I may have even possible done that

25

Awe be-Jesus. Well, who did you work with on that at your level?

A: I worked with, as far as State Police wise, I worked for Major Serpinko and for Captain

Hornberg and I also worked Captain Monico,

Captain Young. We did some work with the

Deputy Commissioner on occasion was there. The

Commissioner on occasion was there. BCI, I mean

there was some meeting were we had as many as

seventy to eighty people in a meeting. We also had

11 outside agencies FBI, NGA Officials, NGA Security

Association Officials. We work with Penn Dot. We 12

13 work with a myriad of different entities Secret

Service. A lot of people we work with through out 14

that Penn State University Officials, Penn State

Police Department, and State College Burro Police 16

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Q: You put a lot of planning into it?

A: Yes sir

O: What role did you play in the

planning Process? 21

22 A: I was the Administrative

Coordinator, which meant that I had over all

24 responsibility for the command post and

communications.

where there was an allegation that something possible could have been violated. Okay, but I felt that there weren't violations but I made further inquiry to make sure that I determined that.

Q: Remember the National Governor's Conference or whatever the hell it was?

Yes sir, very well.

Q: Probably a lot of work for you poor guys I'd imagine.

It was a very rewarding experience.

O: Sure it was. Where was the held?

It's out in State College

Q: You do a lot of planning for it?

14 About two years worth of planning,

15 yes.

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What were you doing at the then? Q:

A: My full-time job?

18 Q: Uh-huh

Was the Commanding Officer of 19 A:

Troop A, Greensburg

Q: Westmoreland County?

22 A: There you go

23 There you go

24 Well right next to Broads Country,

25 Cambria

26

Where was that set up?

That was set up in the Penn Stator

Conference Center Hotel

Q: Where was this conference held?

A: In State College

I thought it was held in

Washington Pennsylvania.

A: No sir

Q: It wasn't held in Washington

Pennsylvania?

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A: No sir

Q: It wasn't held in Pittsburgh?

> A: No sir

Q: Holidaysburg or Altoona?

A: No sir

> Tyrone? O:

No sir. You're getting closer.

Oh boy, held up in State College? O:

Yes sir A:

> Where was the command post? 0:

Well the command post during the

22 actual event was in the Penn Stator Conference

Center Hotel in State College. That's during the

actual event, but the planning stages we to Saint-

Louis. We went to Washington D.C. I'm trying to think if we had meetings anywhere else.

> O: California?

A:

Republican National Convention may have gone to

Not for that. I believe the

California for that. Saint Louis, I went on two

occasions. I think there were three trips to Saint-

Louis, numerous trips to State College. I can't

remember where else we held meetings. We also

periodically we would have meetings of the Major

and the Captains that were involved and those H were generally held in either Greensburg or

Washington Pa.

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Q: Where was Major Serpinko? Where was he out of?

A: His headquarters is in Washington Pa.

Okay I don't think I have any

further questions. 19

20 MS. REYNOLDS: No I don't have any questions. 21

MR BAILEY: Yeah, just one final. Did 22 23 you ever discus Captain Ober's transfer with Mr. Serpinko 24

issues that he would be working on. That was

pretty much the extent of the conversation. It

really didn't surprise me because I know on the

Republican National Convention they had detached

a Captain to work for the Area Commander or

Taskforce Commander for the Republication

National Convention they had detached a Captain

full time.

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Who was that Transue?

A: Transue, yes.

O: When did they do that?

When? A:

Q: Yeah when

I don't know the exact date, but it A: 14 was prior to the time Captain Ober was assigned.

About a year before that?

17 I would be guessing. My point is

all of us were doing this as a second job. In other words while I was away at NGA I was still

responsible for Troop A. 20

Q:

A٠ We did have people come in and fill 22

23 in for me, or for Joe Hornberger, for Frank Monico,

24 or anybody else. Were as Captain Transue and

Captain Ober that pretty much would have been

I don't know if you would call it a discussion. He called me one day, I don't know if you would call it two-way discussion let me rephrase that.

Only from him to you?

Yeah he called me at one point for A: informational purposes. That we were getting an additional Captain, to be assigned to area three and to assist with the NGA. That probably would have been back right at the time about the initial assignment. I don't recall the time frame. It probably would have been right after he was notified. 13

> O: Why did he call you?

15 Well because I was one of the 16 coordinators and I'm sure he, well I can't speak for him, but I would assume he called the other two 17 Captains also and advised them.

> Q: Well what did he say to you?

What did he say to me? A:

> Uh-huh O:

Basically that Captain Ober was A: being transferred out to assist with the NGA and that's what he would be doing assisting with the NGA. I think he also talked about some training

their full time job. They wouldn't have been doing

the job that they came from and this job in

addition.

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Q: How many years in the

Pennsylvania State Police?

Me sir

Q: Yeah

> A: Thirty

How many times have you seen a

Captain doing a Lieutenant's job in that thirty

vears?

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12 A: Captain doing a Lieutenant's job?

I've done it.

Q: Where? When?

> I done it not on a regular basis. A:

O: Only in a regular assignment is

17 what I mean.

A: I've never done it as a regular

19 assignment.

> O: Who has?

> > A: No one that I'm aware of.

What were these temporary jobs O:

you did? Where were they? 23

Well, I'm talking about just when I

was a CO in Troop A or Troop G if the Staff

ı	Lieutenant happened to be gone for the day and		
2	something staff wise needed done. I would take		
3	care of it.		
4	Q:	Of course. I thought	
5	A:	No, no not assigned	
6	Q:	Yeah, not assigned to a position.	
7	A:	No .	
8	Q:	No you just performed the duties of	
9	picked up some slack, right?		
10	A:	Yes	
11	Q:	Yeah, but you weren't assigned?	
12	A:	No	
13	Q:	Well who was? Give me a situation	
14	on somebody o	else. Thirty years you've certainly	
15	seen it, haven't you?		
16	A:	No	
17	Q:	You haven't? I don't have any	
18	other questions.		
19	MS.	LYDE: 1:38 p.m. the deposition a	

INDEX

access, 10, 11, 12 administrative, 8, 13, 16, 17, 19 attorney work product, 7, 8, 9, 10, 11 BPR, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 18 Bureau of Professional Responsibility, 5, 17 Commissioner, 5, 8, 10, 11, 12, 13, 14, 17, 18, 24 complaint, 6, 7, 14, 16 complaint verification form, 6, 7, 14 complaints, 6 Conley, 2, 11

Deputy
Commissioner, 12

FBI, 8, 9, 25
Front Office, 18
inquiries, 16, 17, 20
inquiry, 14, 16, 17, 18, 19, 20, 22, 23
investigate, 12, 13, 17, 18
innal
ibility, 5, 17
inner, 5, 8, 10, 14, 17, 18, 19, 20, 21, 22
investigation, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22
investigator, 5, 6, 7, 8
lawsuit, 7, 8, 9
Lieutenant's job, 29

NGA, 25, 27, 28

Oher, 2, 3, 7, 8, 9, 13, 27, 28, 29

Republican National Convention, 26, 28
1, 18, Saint-Louis, 26
Serpinko, 24, 27
State College, 24, 25, 26
7, 8, 9. State Police, 3, 4, 5, 9.

Saint-Louis, 26 Serpinko, 24, 27 State College, 24, 25, 26 State Police, 3, 4, 5, 9, 12, 15, 17, 19, 24, 29 subject to/from letter, 19 supervisory inquiry, 20

Penn Stator Conference Center Hotel, 25, 26

transfer, 27 Troop Commander, 6, 7, 14, 16

Westcott, 2, 11, 12

Major Pudliner has concluded.

IN THE UNITED STATES DISTRICT COURT FOR MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER

1: CV-00-0084

Plaintiff

(JURY TRIAL DEMANDED)

Versus

PAUL EVANKO, MARK CAMBELL, THOMAS COURY, JOSEPH WESTCOTT, HAWTHORNE CONLEY JOANNA REYNOLDS and SYNDI GUIDO, Et al. Defendants

DATE:

March 5, 2001

PROCEEDINGS:

Video Deposition of John R. Brown

APPEARANCES:

For the Plaintiff:

Donald Bailey, Esquire 4311 N. 6th Street Harrisburg, PA 17110

For the Defendants:

Joanna Reynolds Esq. Barbara Christie Esq. 1800 Elmerton Avenue Harrisburg Pa. 17110

we have a sound check please?

MR BAILEY: Yeah, sorry. Yeah, my name is Don Bailey. I'm attorney for the plaintiff, Darrell G. Ober in this case. And if we possibly could have the attorneys present identify themselves and give their official address and phone number for the record. Makes this easier for the transcriber.

JOANNA REYNOLDS: My name is Joanna

Reynolds. I'm an Assistant Counsel with the State Police. I represent the defendants in this action. My address is 1800 Elmerton Avenue Harrisburg Pa. 17110, which is Pennsylvania State Police Headquarters. My phone number is 717-783-5568.

13 BARBARA CHRISTI: My name is Barbara 14 Christi, Chief Counsel Pennsylvania State Police, and my 15 address and telephone number are the same as those 16

given by Assistant Counsel Reynolds. 17 MR BAILEY: Okay Rick, can I refer to you as 18 Rick? Is that okay? 19

MR BROWN: Absolutely that's my nickname,

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ves. MR BAILEY: I'm Don. What we're going to be doing here today Rick. I know you've sat in on some of it. Let me very quickly go through it cause now you're a fact witness and it's a little different when your in your

TONY MARCECA: Good morning be advised the video and audio is in operation. My name is Tony Marceca. My address is 2219 Dixie Drive York Pennsylvania, 17402. I have been contracted by PR Video to be the video operator for this deposition. The case is in the United States District Court of the Middle District of Pennsylvania. Could I have a caption sir? MR BAILEY: I'm sorry did I take from you? TONY MARCECA: And the caption is Darrell G. Ober plaintiff versus Paul Evanko, Mark Campbell, Thomas Coury et al. It's in a civil action in 1: CV-01-0084. MR BAILEY: You gonna swear him in? 13 TONY MARCECA: Today's date is March the 14 5^{th} , and it is now 9:14 a.m. The deposition is taking place in the law office of Don Bailey at 4311 North 6th Street Harrisburg Pennsylvania, 17110. The video deposition is being taken on behalf of the plaintiff, Mr. Ober. The time now is 9:14. Would you please state your name for the record and raise you right hand? 20 MR BROWN: John R. Brown 21 TONY MARCECA: Do you swear to tell the 22 truth, the whole truth so help you God? 23 MR BROWN: Yes I do. 24 TONY MARCECA: Thank you. Mr. Bailey could 25

position and I realize that. It's a video deposition. We maintain a copy here. You are invited and welcomed to come here anytime and review the video deposition. We will be making a transcript of the deposition. They are available to your counsel that they can work out with Tony, for the same price, as they are available to me. That's number one. Number two, as we go through the deposition from time to time if I inadvertently, I assure you it will be an error on my part, if I inadvertently interfere with your response or don't give you a complete chance to finish I want you to make sure you catch me or you stop me and answer fully and completely if your attorneys don't catch me in the mean time. You have two very capable lawyers here to represent you. Now it's important you stay within the camera range. If not the operator, Mr. Marceca, will let you know. You need to keep your voice up. I don't assume we're going to have any kind of a problem with that. And the last question and this goes for your attorneys also. If at any time 19 during the deposition you want to ask me what I mean by a question or where I'm going with a group of questions. We're not here to trick you. We're not to create a

distorted fact record. We want to get everything down. I do not mind giving you an offer on a question. I do not

mind responding to you if you a question of me about

where I'm going or what I'm trying to do. I won't be offended by that at all. I invited you to do that. That being said, do you have any questions to me?

MR BROWN: No sir

MR BAILEY: Okay, Rick. Oh, usual stipulations I guess, objections except to form of the question reserved until time of trial. Is that Okay?

JOANNA REYNOLDS: Yes, fine MR BAILEY: Okay Rick, now how are you

employed?

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A: 'I'm employed as a Captain with the
Pennsylvania State Police. I'm currently assigned to the
Internal Affairs Division of the Bureau of Professional
Responsibility.

Q: You in fact replaced Mr. Ober at the position. Didn't you?

A: That's correct

Q: When did that occur?

A: January 29th of 2000 was when I was promoted.

Q: Now my understand is, I was at an earlier deposition there was an indication from one of your attorneys. I think it was Syndi Guido however no the two attorneys who are here. That you were appointed to some kind of a position as an investigator in this case. Is

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A: Yes sir. That's my understanding.

Q: Do you have a recollection for your knowledge what Mr. Ober was doing at the time. In other words, what position was he in?

A: My recollection he was Director of
Internal Affairs, but I think he was acting Bureau
Director for the Bureau of Professional Responsibility.

Q: Now the Bureau of Professional Responsibility has essentially two divisions. Is that correct?

A: That's correct

Q: What are those two divisions?

A: One being the Internal Affairs Division, and the other division if the System and Process Review

Q: Mr. Ober while he was acting capacity and in temporary capacity, apparently as Bureau Director was at the same time the Director of IAD. Is that correct?

A: That's correct

Q: Have you ever learned or come across any information that explains why the FBI went to Captain Darrell Ober at that time?

JOANNA REYNOLDS: I'm gonna object to this question. If the witness only knows about this

that correct?

A: That's correct

Q: Was that by virtue of your capacity in IAD or do you know?

A: I don't know

Q: What I want to ask you about is a little
bit different then that, okay. I have no desire to ask you
at least this time about the investigation. Although I will
ask you some procedure questions, like if you produced
reports or done interim reports and who you gave them
to. Mostly what I want to ask you is something that's
quite different. These are gonna be fact questions about
your knowledge, we believe to be your knowledge, about
sequences of event or situations, or conversations that
may have occurred that are relevant to this lawsuit. In
that regard have you seen or have you had an
opportunity to at least review or look at the complaint
and the amended complaint in this matter?

A: Yes sir

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Q: Let's go back to the with some background about why we're here today. I'm gonna be asking you about what you may have learned about why or how we came to be here today. It is my understanding that at sometime the FBI or some FBI members had come to Mr. Ober about a federal investigation. Is that correct?

information from the investigation that he's done for us, because that would be attorney work product information

3 and we would object. I would instruct the witness not to

4 answer that, unless he knows it outside that

investigation.

MR BAILEY: I'm not gonna pollute the record with objections at this point, but this one is very special. I need to respond to it. I don't agree with that analysis. I don't believe an attorney can extent any privilege of work product to an investigators be like a DA saying that he doesn't have to talk about what some police officer investigated. So you would object to that, but you of course follow your attorney's instructions. At this time I just want to place an objection to the objection.

JOANNA REYNOLDS: Don, just so the witness is clear on this. If he knows that information outside that investigation at the attorney's request, he may answer the question. If he does not then he should not answer the question.

MR BAILEY: Rick let me do it this way. When did the attorneys, any of them come to you and say you are now an attorney or investigator or whatever the hell it is? Tell me when that occurred.

24 A: I want to say March or April. I think 25 April of 2001.

That was after this lawsuit began. Is that correct?

Yes sir

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With my objection standing, but out of O: respect for opposing counsel's interactions to you, which I respect and disagree with. Why don't we agree that unless I specify other wise so that your attorney has notice, that none of my questions should be considered as addressing anything that may have happened after March or April of 2001. Can we agree with that, and that will solve our problem I think?

JOANNA REYNOLDS: The problem, no it's not gonna solve our problem, because some of these events occurred before March or April 2001 but the witness only learned of them because he was doing this investigation. In other words he was investigating events...

MR BAILEY: Let me

JOANNA REYNOLDS: That happened before March or April of 2001.

MR BAILEY: Let me clear this up, because I did not make myself clear. Again with the understanding that I disagree with counsel, that she can not cloak you with her privilege. It's not her work product at all it's your work product. If she wants to go investigate she can do it. It might take her out of some immunities, not that

acting Director of Internal Affairs to perform his duties.

That would have been April 26 of 1999. That lasted until

I was promoted. During that time period even though I

was doing the duties of a Captain I still had my

Lieutenant duties to perform. I was still the Central

Section Commander in the Internal Affairs Central

Section, and responsible for scheduling, redoing reports,

and giving assignments. So I still have that. Also when

Captain Ober went to IIMS I picked up, he was involved

in the discipline committee. Which was a committee that 10

the department and the union, the PSTA had together to 11

look at revising the current regulations in regards to 12

internal investigation, discipline, so on and so forth, and

I pick up going to his meetings and ended up following it 14

15 all the way to when I'm at with it now.

Q: Until Captain Ober went over to IIMS, and by the way what does IIMS stand for? Do you know what the acronym stands for?

To the best of my knowledge it's the Incident Information Management System or something like that. It's an automation project.

Q: And what's that about?

As far as I know, I not the most 23 technology oriented person around, but as far as I know 24 it's automating the department as far as forms and

I'd love to see that happen, but point and fact is I don't

think she can give you her immunities. So let's

understand that we're talking about when you learned of

it, okay? Is that alright? Okay, so with that

understanding and the fact that you know what the oath

is and what your duties and obligations are, if you need

to think about that or something when I ask you a

question you think about that. Okay?

Okay A:

Cause the things I have to ask you about in all honesty are fact issues that really would be what you knew before then anyway. So from a technical point of view I don't agree with your attorney. From a practical point of view I don't think it should interfere with this deposition at this time, okay?

> A: Okay

Alright sir. So we're talking about things that you learned up to or on or before March or April of 2001, okay? Understood?

> Yes Sir A:

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Alright now until you replaced Captain Ober and that was January 29, 2000, what had you been performing? What were you doing?

A: Well I was in acting role. When Captain Ober went to the IIMS project I was assigned as the

having a centralized. Let me say this. I was called in to get an Internal Affairs perspective by the people involved, the contracted people, and they were saying what could Internal Affairs use in this automation project? We could help you out with your forms, your reports, and that sort of thing. So I imagine at some point and time you'll be able to sit at a computer and do everything and get rid of

O: The idea behind IIMS is to lessen the number of human errors in using a database that would boost productivity investigatory, record keeping, and administrative productivity. Isn't that basically the idea?

the paper. You know the actual physical paper.

That's basically it, but always keep in mind too those sort of things are only good as what you put in them.

Q: Right, and this is a project that...who had assigned Captain Ober tot he IIMS project? Wasn't that Commissioner Evanko?

A: I recall seeing a CLEAN message on his status of going over there, and I believe it was from the Commissioner. But as far as how he came to that I don't

Q: IIMS was a very high priority for the Commissioner as I understand it. Is that correct?

A: Like I said that's outside of my realm. I

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don't know what is was on the Commissioner's plate.

Q: But the Commissioner, to the best of your knowledge, had assigned Darrell to that position in sometime in April of '99 you indicated.

Yes sir. I believe it would have been, I think he went there effective April 26th of '99. Cause that was the day that I became the acting Director of Internal Affairs.

Yes sir. Now when did the FBI come to Darrell?

To my knowledge it would have been late September, early October of '98.

Q: Now did you at some time learned when Darrell had informed the Commissioner about the FBI's request?

What I recall sir is Captain Ober

JOANNA REYNOLDS: Again I would caution the witness if you learned of that after you began the investigation in this case, then it's attorney work product and you should not testify to that.

MR BAILEY: Mr. Brown, we know that you knew about it before you, you know, okay?

MR BROWN: Okay

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MR BAILEY: I know that. I know that from a variety of sources. Let me say this to you. You're a very

And I think he actually, he called me to make sure I was at the office is what I'm remembering. Then he faxed me the complaint form from where ever he was at that day. He faxed it to me cause I would have been the person to receive it, but as far as any communications he had I'm not aware of any.

Q: Okay. Now so it's you testimony as you sit here today that you were never aware prior to March or April of 2001. Now we're talking about the entire year of '99 and 2000. That you were never aware, until you did your investigation obviously or assigned to this so called attorney's investigation, that you were never aware that the Commissioner had been, let's lay a foundation this way, had been advised of the FBI interest.

The only thing that I can say during that time was that my knowledge, I mean I don't know what communications occurred between Captain Ober and the Commissioner. I know I was told by my Major, who at the time was Major Conley, that the Commissioner requested an investigation into the circumstances surrounding the FBI probe or whatever you want to call that. So all that behind the scenes stuff I

Okay let's start there. At some time Major Conley tells you that the Commissioner was interested in some type of investigation into what was intelligent person we know that. You're very skilled. Let me repeat the groundwork so we don't have to go through this every time there is a question where counsel gets nervous, okay? Cause I want to get through this deposition. The understanding is that if you learned about it from investigatory activities or any activities I guess, that occurred after March or April 2001, you know sit back and think when I ask these questions okay?

A:

Q: Or you want to confer with counsel do that. We know what the ground rules are. You know what the ground rules are?

A: Yes sir

Okay let's see if we can get through this. Okay now, when do you recollect first learning that Captain Ober had told the Commissioner about the FBI coming to him in the fall of '98?

17 Back in 1999 I did not, I'm not aware of 18 any contact that Captain Ober had with the Commissioner. As I knew is what Captain Ober forwarded to me. He faxed me a complaint sheet, and it 21 said on there that in October of '98 somewhere early October of '98 he was informed by the FBI that this

Trooper Stanton may have been involved in some type of job selling or political corruption scheme of some sort.

behind the FBI interest.

A:

Can you remember what Major Conley said to you?

The only thing I can remember Major Conley saying was that the Commissioner requested an investigation into the circumstances surrounding the FBI, I don't know if it was the FBI investigation or the FBI probe or how it was handled or something to that effect. In my position as the acting, keep in mind I had only been acting for about three, four weeks maybe. No not even quite four weeks.

So this would have been June of '99?

Well no this would have been May. ·A:

May of '99

I'm thinking around May 20^{th} or so. A:

Of '99?

A: Yes sir

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Q: So May 20th. Let's make sure we keep calendar in front of us. Sometime on or about May of 1999 Major Conley tells you that the Commissioner requested an investigation into the FBI probe?

> To get all the facts. A:

> To get all the fact?

Yes sir. Get all the facts involved with

what occurred? What happened here? Well at that point either yourself or Major Conley assigned a BPR number, right? A: Oh, oh you didn't do that? O: No I didn't do that no. A: Did Major Conley do that? Q: Not to my, no A: Okay, I'm not trying to be cute now. I jumped to quick on that question. So let me, I apologize to you. Let me go back. Sometime on or about May 11 roughly the 20th or so, you're not sure, Conley say to you, 12 Major Conley says to you the Commissioner requested an 13 investigation. Did Major Conley indicate...Strike that. 14 Did Major Conley during that conversation provide any other detail? No, no sir 17 A: Q: Okay 18 I didn't have any kind of document in A: 19 front of me either. 20 O: 21 I mean I wasn't given like a form or 22

do anything? Were you suppose to do any follow-up

No just a verbal thing from

anything.

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Yes

A:

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action, do something? Do you remember anything like that? What I'm gonna do here, let me tell you where I'm going with this. I'm gonna try, I'm gonna ask you questions having to do with, you know why Major Conley would say this to you. Since the conversation, the way you've described it so far was relatively brief and there was not a lot of information in it, I'm gonna try ascertain what his purpose was and you know if there was any follow-up acting. Can you tell us let's say for the 10 remainder of May, let's do it this way. That's my offer. Ħ That's where I'm coming from. For the remainder of May 12 '99 do you have a recollection of anything that you did in 13 regard to this comment by Major Conley? A: Only other thing that I recall was that 15 Major Williams and Major Wertz's were mentioned as the 16 people that were gonna be gathering the facts on the 17 18 inquiry. Was that discussed during this 19 Q: 20 conversation? A: I don't recall if it was discussed. You 21 mentioned that to me the first time, cause see Major 22 Conley's office and where I was working out of is very 23 close proximity and that could have just. I don't if he 24

said that the first time or if he told me later in the week

And was anyone else present at that time? Not to my, no sir, I can't, no Now didn't you end up at a meeting were the Commissioner was present? Coury was present. Conley was present. Who all was present at the meeting where this issue of this investigation was discussed? Not me You weren't there? O: No sir. I was never at a meeting with the Commissioner, Colonel Coury, who else did you say? O: I'm trying to learn from the meeting. Let's do it this way. Did you ever learn of a meeting were the Commissioner was present and Mr. Conley, Major Conley, was present? Colonel Coury was present, and others were present where the investigation was discussed? A: You never learned of that from anyone? O: A: Okay. Alright now when Major Conley 21 told you, let's go back to this sometime on or about May of 1999, okay. Maybe around May 20th or so of 1999. When Major Conley discussed this with you what did you do? In other words, you recollect whether he asked you

or whatever that they were going to be doing, gathering the facts. Q: Rick the important thing is that Major Conley, who's head of BPR, tells you this. Right A: Q: You're at least at this time, acting Director. You weren't actually appointed to that position of January 29th of 2000. You were acting Director of IAD. Q: And you weren't involved in that investigation? A: You were never asked to assign it a O: number, do any paperwork on it, or to log it in, or anything like that? What happened there sir I can explain A: that to you. Yeah that's fine. Sure, please. 18 A: What had happened was that when I got the complaint sheet for Captain Ober the first thing I needed to do was assign someone from Internal Affairs to look into this Stanton thing. So I contacted our western office, I think it was Lieutenant Carnahan assigned Sergeant Dana. Could you spell those names for the

record?

2 A: Yes, Carnahan is C-A-R-N-A-H-A-N, first
3 name Donald, D-O-N-A-L-D. The Lieutenant was Dana,
4 D-A-N-A, Seifner, S-E-I-F-N-E-R I think is the correct
5 spelling of her name.

Q: Okay And what I did was she was assigned to contact the FBI and get whatever information that they were gonna turn over to us. So we could pursue, properly pursue what we needed to pursue with Stanton. 10 So what end up happening she end up getting a box of 11 tapes and reports that she forwarded in to the office. I 12 needed to get those transcribed so there was some down 13 time while these were being transcribed. I know that that 14 information, Major Wertz and Major Williams at times 15 would pop into the BPR office unannounced and had 16 never called and said hey I'm stopping by or something. **17** They just would come though. Just routine during the 18 day the people would stop through there. I remember a 19 conversation I had, a brief conversation I had with I 20 believe it was Major Wertz. He made a comment to me 21 that a number hadn't been taken. He said something 22 like "Oh, an oversight here. There wasn't a number 23 taken for this." or something to that effect, and I said " 24

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Well I'll double check.". I said something to Major Conley

Yep he's your boss. I know how the systems work. I've been in the Army, and the Army runs a little different maybe. Let me just. I very affectionately look back on those days. The best thing that's ever happened to me in my life, but let me tell you me problem with this one okay. What is a complaint verification form? Can you tell me what that is? A: A complaint verification form is a form that we use to verify citizens' complaints. It is a form we send to citizens when they haven't completed, like say for intense we can receive complaints form a citizen. They write a detailed letter and they sign it. That is a 12 13 verification of complaint. Not ever complaint that we receive in the bureau has to be on our form. Like for intense if you wanted to file a complaint you being an 15 attorney you have access to notaries. You could swear at an affidavit and send it in and that could serve as the 17 complaint verification. Well who did the affidavit in this case? 19 O: There wouldn't be one cause this was an internally generated complaint, not an externally 21 generated complaint. 22

Q: Oh, okay

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A: That's the difference.

Q: So IAD can go off and investigate a

just brief I said "Hey is what there, is this doing the

investigation at the request of the Commissioner?", and

3 he said yeah. So I wrote up the worksheet at that time. I

wrote up the complaint sheet and that would have been

in June of '99. Yeah it would have been June of '99. I

wrote up the worksheet and assigned it a number and provided that to them.

Q: You didn't check with the Commissioner

A: No. I never talked to the Commissioner.

Q: So you wrote up, you on your own, wrote up a complaint sheet for the Commissioner based upon hear say comments made to you by Major Conley, and apparently some generals made by Mr. Williams and Mr. Wertz. Is that correct, some awareness of what they were

17 A: Yeah I think it was, my recollection is
18 Major Wertz said they needed a number for it or
19 something. There wasn't a number taken and I checked
20 with Major Conley who is the Bureau Director and he
21 said this is being done at the request of the
22 Commissioner. And I just said I'll make up the sheet

Q: Okay Rick

doing?

based on it.

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A: That's my boss

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Trooper based upon some verbal communication by
 somebody and just investigate a Trooper, their career,

their activities, etc. Is that right?

A: There's a provision in our regulations

AR-425 that for investigative criteria that the

6 Commissioner can request an investigation.

Q: Rick you never talked to the

8 Commissioner. Didn't you tell me that?

A: That's right

Q: And you received nothing written from the Commissioner?

A: That's correct

Q: Did you get a phone call from the

14 Commissioner?

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A: No I didn't

6 Q: Did you get piece of paper form the

7 Commissioner?

A: No I didn't

9 Q: Any electromagnetically recorded

massage like a tape-recorded message?

A: Nope

Q: Or anything of that type?

A: No si

Q: So your telling us you weren't requested to fill out this form. You did this on your own.

That's A:

Are you protecting someone sir? Now I'm not insulting you.

A:

Q: Don't be upset with me. Are you protecting someone?

No sir. My Conversation with Major Conley was that this wasn't done, and would do it.

> Q: Okav

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A: I mean I've written up worksheets on other things.

Q: Alright sir. I'm not saying you haven't, and I'm just trying to delve into some of the reasons here,

Uh-mum

Why was it important to fill out this? I mean, why do this? Let me tell you were I'm coming from first. Cause I don't want, again I'm not interested in leading you down a blind alley. I just want to know what happened here.

> A: Okav

Q: What I'm gonna ask you is a group of questions here that have to do with the form. Why it was important to assign this a number after? And I'm gonna ask you question about when this investigation began,

Q: Yes. Yes sir I understand that. Okay, so it's important for that reason. Are there any other reasons why it's done? A: Just an indexing and tracking number Q: Well if I use the term "off the books", okay. Let me use that term. If I'm coining a term let me try to explain to you what I mean by that. If an investigation's going on or occurs and it's not identified in the system as a existent valid investigation I want to find out if it indeed is an investigation and what controls 10 there may be on it, what perimeters govern it, or 11 whatever. Because I assume that in an organization of 12 over four thousand people that folks can't just go off 13 investigating folks without some type of conformance to 14 regulation or administrative practices. That's where I'm 15 coming from. So let me ask you some questions there. 16 You told us that the IAD control number is essentially 17 designed for tracking purposes and in order to make sure that information is kept in one place so it can be entered 19 into a database and be referred to and use. That sort of 20 thing. Why didn't at the time...Strike that. At the time 21 the issue came up of this not having a number, I think 22 you described it sort of as a "ut-o" by Mr. Wertz or Mr. 23 Williams. "Ut-o" there's no number here. How long at

that time had Mr. Williams and Mr. Wertz been in the

because everything I've heard so far indicates that it was underway when this was done. That this was done after the fact. So I'm gonna ask you about that, okay?

> A: Okay

O: I'm gonna ask you why that was important. I'm gonna ask you about the procedures connected with it. So first question, why was it important to fill out that, you know assign it a number, fill out that form? What's the meaning of that? If you could just go investigate somebody, which you've told me you can, why is it important to give it a number, or assign it some number, or complaint, whatever it is. I need you to explain that to me.

A: It use to be called the BPR control 14 number, but it's called the IAD control number now, and that was something Captain Ober instituted when he was Director. The control number it's self is for tracking purposes. So that any report that is generated from an inquiry or investigation can be tracked years down the road. It's for our filling system and it's also entered into a computer database. Cause we have to do a statistical 21 report at the end of the year on how many complaint, how many investigation, how many this or that. We do a statistical summery of everything that come to our bureau.

Pennsylvania State Police? Do you know?

A: I don't know, but I know Major Williams was close to retirement. So I would imagine he had thirty years. Major Wertz I think he was close to thirty years.

Q: So when they started their investigative activities they didn't open it kind of complaint. You know what they were told, what was said to them anything like that?

A: No sir, I don't know any of those, what they were told. The only thing that I recall Major Wertz, it's either Major Wertz or Major Williams. I don't remember which one. Or it might have been both. They had asked me about the supervisory inquiry. You know doing a supervisory inquiry, the documentation and I explain to them that this was something that Captain Ober initiated that we were using in the Internal Affairs Division. They want to use that type of process. I just told them basically what was required and drafted a special order that Captain Ober made. Bits and pieces of it, I didn't go through the whole thing.

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Q: Okay, well what is involved in this 21 supervisory inquiry, any documentation there? 22

A: Yes sir. They do, it's done on correspondence which is called an STD-501. Which is subject, to/from letter.

ı	Q:	Can you stop there for just a second?
2	A:	Yes sir
3	Q:	Supervisory inquiry is initiated by a
ı	supervisor, an	I correct?
5	A:	It can be initiated by a supervisor or a
s	Commander.	
7	Q:	Somebody, authority individual in the
3	chain of comm	and.
•	A:	Yes sir

Q: Now you weren't above Captain Ober in the chain of command at that time. Were you?

A:

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Q: Well did what you initiated in June of 1999 was what you initiated at that time was that a supervisory inquiry? Is that what you're telling us?

A: To the best of my knowledge, yes.

Q: Well how? What knowledge, what facts know to you initiate that that was a supervisory inquiry?

That was what Major, I think it was Wertz told me that they were gonna use.

That they were gonna use?

They mean the process that they were A: 22 gonna use to document. 23

Q: Right, that's the process they were gonna use to define of describe this investigation. 25

ı	Q: No, no, no
2	A: I'm gonna talk to my counsel about it.
3	Q: Look I'm gonna object. Now wait.
4	OPOSING COUNSEL: No
5	MR BAILEY: There's a question on the table.
6	That's alright. I'm not gonna stop you can talk to her.
7	MR BROWN: I understand sir
8	MR BAILEY: I have to do my job. All I'm
9	asking you I'm not asking you what's in it.
0	OPPOSING COUNSEL: No the issue
1	MR BAILEY: Please let finish my
2	OPPOSING COUNSEL: The issue is where
3	that's part of attorney work product. That's the issue.
4	MR BAILEY: You're now claiming, are you now
5	claiming counsel that an investigation done before March
6	of 2001 is part of attorney work product?
7	OPPOSING COUNSEL: No
8	MR BAILEY: You're not serious are you?
19	OPPOSING COUNSEL: That his knowledge of it
20	would have been post March of 2001, and you asked him
21	about his knowledge of it "Do you have it in your file?".
22	MR BAILEY: Now wait a minute.
23	OPPOSING COUNSEL: That's part of attorney
04	work product.

MR BAILEY: Now wait a minute. How do you

ì	A:	Correct	
2	Q:	Where's the to/from letter?	
3	A:	Say again	
4	Q:	Where's the to/from letter? Is there any	
5	to/from letter?	Did the Commissioner, did he write up	
6	some letter?	old he write anything down?	
7	A:	I'm misunderstanding you. The to/from	
8	letter from the Commissioner?		
9	Q:	Sure. He doesn't have	
10	A:	No, see maybe I can clarify this for you.	
ii	Q:	Yeah	
12	A:	Like if I'm assigned to do a supervisory	
13	inquiry, I woul	d document what information I gathered	
14	during the cou	rse of the inquiry on a subject, to/from.	
15	So that would	be the responsibility of the person	
16	assigned to inv	vestigate it.	
17	Q:	Well, there is a file on this then, right?	
18	There's a file o	n, there's a BPR on this then?	
19	. A:	Well there was a control number issued	
20	on that, correc	et.	
21	Q:	Well have you seen it? Do you have it	
22	there in your i	îles?	
23	A:	No	
24	Q:	You don't have the investigation?	
25	A:	Well let me talk to my attorneys.	

ŧ	know his would have been, and he hasn't been told that
2	has he?
3	OPPOSING COUNSEL: Because I've talked to
4	him about it.
5	MR BAILEY: Have you? Okay let's put the
6	question this way. Prior, cause this is our groundwork at
7	all times here. Prior, and I again strongly object to the
8	use of this attorney work product artifice which is what I
9	believe it to be. But prior to March or April 2001 were
10	you aware of the existence of any BPR or investigative file
11	on this matter?
12	A: I didn't see
13	Q: It's smart to be quiet sir
14	A: No, let me tell. You know I did not see. I
15	know that Major Williams and Major Wertz were assigned
16	to look into it. What documentation or what ever they
17	end up doing I had no knowledge of at that time.
. 18	Q: So as you sit here today, your testimony
19	is that prior to March or April of 2001 you don't have any
20	fact to indicate that there was a file physically composed
21	that was placed into IAD or BPR files. That's what you're
22	telling us.
23	A: What I'm telling you the only thing that I
24	had in BPR is the complaint sheet that I wrote up with

the number on it. Nobody ever came and said here's a

report. I never, all I had was that worksheet that's it.

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O: Let's go back to, you had indicated that at various times during before this number was assigned and you indicated that it was apparently a supervisory inquiry number.

- A: Well the control number, maybe I can explain this to help out here.
 - What is a control number? Q:

It's a sequential number. It use to be A: just one through whatever, and at some point and time I don't know if it was Captain Ober if he changed it or if it was even before him. I don't know. I don't remember this, but we started doing it by year. So it would be like 1999-1 and then up through to the end of the year.

Q: Do you remember the number of this file, the number, the control number?

I'm thinking it's 1999-503.

Q: And at the end of 1999 what was the last 18 number you remember? 19

A: '99 I think we were over a thousand I think. I'm think like a thousand something.

Q: Alright sir go back. You were explaining 22 to me the way this control number was assigned. 23

Oh, and maybe I can clarify. I've been in the Internal Affairs Division since 1994. So I've seen

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aggressive or whatever that may be. That information was stored and kept in a separate database and it was given what we called an event tracking number. It did not go into the, it was not given a BPR or an IAD control number. It was given a separate number because it was demininis and it didn't get kicked in the system of something that may be warranting a formal action, a formal discipline. I don't know if Captain Ober started this or not or if it was started right before he took over, but when I took over as acting the supervisory inquiry process was already in place and up and running. Everything, the way it use to be done we didn't put IAD 12 numbers on things that were going back to the troops to handle how they saw fit. Now everything got a number 14 so of course the numbers went up, and I think that's why 15 they categorized it. I think the decision was made to get 16 17 the year and just go sequentially from there.

Q: Well then why didn't they complaint forms instead of you? Why you'd do them?

19 A: I just thought I was...just record keeping. 20 21 There's no Q: Well did they indicate they were gonna do 22

23 it? 24 A: Who's they?

Mr. Williams and Mr. Wertz. You're the

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some changes in processes along the way. When I first came to Internal Affairs complaints that would come in that didn't rise to the level of where a Commanding Officer was seeking disciplinary action

Can you hold one-second sir? O:

Yes sir

Thank you Q:

MR BAILEY: Okay you were at a point were you had indicated. I just made a little change there. You were at a point were you had indicated that it was not a situation where a Commanding Officer was looking at a disciplinary

MR BROWN: Right as I said it was a demininis complaint, something very minor. It would come in or even if we had a complaint from a citizen, and it was like, let me think of a good example.

Q: Chewing bubble gum in my face.

17 Well not even that. Just the trooper 18 when he pulled me over was intimidating. Well you 19 know, the uniform it's self would be intimidating to people, but that didn't in it's self describe misconduct. 21 But yet, what we would do is I would send the 22 information with just a note saying handle anyway you deem appropriate. Which may mean do nothing. Which 24 may mean call the guy in and say hey be a little less

guy that initiated the formal process of giving this thing a number, right?

A: I gave it the...I put the...well as far as. Major Conley told me in May that the Commissioner requested an investigation. So I didn't initiate that that was already

The investigation began

Okay I don't know when they actually A: started working on it.

Q: Let's go back to your testimony. You indicated that at some point at least, Mr. Wertz and Mr. Williams came in to look at the Stanton investigation, product, stuff that came in.

Q: Let me ask you a few questions about that before we move on. What gave Mr. Wertz and Mr. Williams authority to look at the Stanton stuff? Where 18 did they get the authority to do that?

> A: I don't know.

As investigators they're required to A: investigate. I mean I

They're Majors they were given an assignment. It was for me to be in their way.

Okay. Well if I understand correctly, Captain Ober had sent in some kind of complaint sheet Correct on Mr. Stanton. Correct A: You know when that came in? O: My recollection is, he faxed that to me on A: or about May 19th of '99. I'm thinking is when it was, the 19th of May. And at that time he was, is the word O: 10 detached to IIMS? 11 I believed that's what he has described, 12 13 yes. Okay whether he was or not he was doing 14 IIMS stuff. 15 16 A: That's correct 17

And to the best of your, well your not sure, but to the best to your knowledge that was either 18 directly or indirectly at the Commissioner's request. Is 19 that correct? 20

> It was indirectly... A:

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Either directly or indirectly to the best of O: 22 your knowledge at the Commissioner's request. 23

That, we were talking about the 24 complaints 25

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from the Commissioner to look into Stanton? From the Commissioner, no. A: How about Mr. Coury? 0: Nο A: How about Mr. Williams? O: No A: How about Mr. Wertz? Q: A: How about Mr. Westcott? O: No A: How about Mr. Conley? O: 11 No. I just processed that and that would 12 be one that because of the serious nature that the 13 Internal Affairs Division would want to look at. 14 Well Captain Ober was out at IIMS, right? 15 Q: Correct A: 16 Until Captain Ober notified you of 17 O: 18 Stanton you didn't have any idea that the FBI had been 19 looking at Stanton, right? That's correct A: 20 Okay so you get this thing from Captain 21 Ober to take a look at Stanton. Did you ask any 22 questions or say that the FBI conducted? I mean what 23 did that thing say? 24 My recollection of the complaint sheet

Of Mr. No of Mr. Ober being with IIMS Oh, oh that. Okay I'm sorry I misunderstood you. Yes as far as I know. I recall seeing a CLEAN message. Okay. Alright. So Mr. Ober sends you a complaint as to Stanton. Did you call him or talk to him or ask him why? A: Who? To Captain Ober? Q: Captain Ober, yeah. Captain Ober sent you, faxed you some type of complaint thing having to do with Stanton, right? A: Okay, did you call Captain Ober? Did O: you talk to him why or ask him any questions? You just more or less handled it the standard procedure. A: Yeah pretty much. I think he practiced 16 sending that to me with a phone call. I think he called to make sure I was there to get it, and then it came in by a 18 fax. 19 O: Okay but 20 Just handled it. I mean that would be 21 something that the assigned investigator in our western 22 section would be responsible for doing as a part of their 23 investigation. 24

Did you ever seen any communications

that he sent me was that he got information from an agent Kush from the FBI that the subject was involved in some type of, I don't know if it was worded "job selling" or "political corruption" or something like that. I think it had on there something to the effect it was being turned over to us to move forward with it. Okav Q: Something to that effect. A: Now under Pennsylvania State Police regulations are investigations into political or public corruption treated in any kind of a special way? 11 Treated in a special way as far as what 12 13 sir? Q: I'm saying like an organized crime inquiry or something like that? Oh, they could be yes organized crime. We have, the Bureau of Criminal Investigation. The Organized Crime Division of that bureau looks into that sort of thing. That's who ended up investigated into Stanton. 20 They ended up investigating Stanton? 21 Q: 22 A: So somebody evaluated that thing, that Q: complaint from Captain Ober.

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Absolutely

And it was, well do you know who did?

It would be the western office of the Organized Crime Division. I think it was Corporal Jeff Shall was the primary investigator on the criminal allegations against Stanton, and then the Internal Affairs western office handled the administrative end of it.

Q: Were you familiar with field regulation 7-4 effective date 12-23-96 titled Pennsylvania State Police department directive subject, undercover, vice drug, and organized crime operations?

A: I know it exist, but I'm not familiar with it. I mean I'm not, I can't sit here and spout all the things that they have to do.

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Of course. Okay now, do you know whether Mr. Wertz and Mr. Williams were aware that the Stanton thing had been assigned to the Organized Crime Division?

I don't know if they were aware of that?

Well what were the records on and the Stanton stuff doing up at, was it Harrisburg? Is that were they came by? Is that were your office was? Let me tell you were I'm coming from so you know again. See here's Captain Ober now, he sends in this communication sometime on or about the 19th of May.

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the FBI and they turned over like a box. I mean they

It's about public corruption. It's about FBI probed, job

gave the stuff to her. A box of tapes and I think there was some reports in there, and she, I don't remember. I think she ended up driving them in and was like this is what they gave me now what do I do with this stuff. I was like well we don't know what's really there. We're gonna have to get some transcript done up and that sort of thing. Somewhere along the line You're telling me the FBI gave you this. Now I don't mean that directed at you. Forget it. 10 I understand 11 I'm thinking about the FBI. The FBI give O: 12 you a box of stuff and you don't know whether they had 13 reduced it to transcription. 14 No we ended up doing our own. We 15 ended up transcribing it ourselves. They didn't give us 16 transcripts. 17 Did somebody stop this investigations in Q: 18 process? 19 Stop what investigation? Which one? A: 20 Stanton and this public corruption. 21 Q: A: 22 Do you know if anyone every interfered 23 O: with it? 24

No

A:

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selling, something of that sort. Mentions in fact the FBI agent Cush. I'm gonna ask you in a minute if you ever called Mr. Cush and talked to him. Now, it's sometime in June when this number gets assigned to, I don't know what else to call it, the Ober investigation I guess. Well the investigation into these events. What events I'm not quite sure, but in any event the FBI probe. I mean this is a probe into a probe. I wonder if that calls for an exponent, but the point is that Mr. Williams and Mr. Wertz come in and they drop by. They don't announce and they're just checking on, on what? Why isn't this investigative product out with the Organized Crime Group or is it being copied into Harrisburg? Can you tell me why you have. If the Stanton stuff is an Organized 14 Crime issue, which according to PSP regulations I've 15 looked at it should have been and apparently was and that's sent out to western Pennsylvania what's all that 17 stuff doing in Harrisburg? What's going on? 18 A: What I recall when I got the complaint 19 sheet from Captain Ober my biggest concern was what do 20 we have. I mean what really do we have, and the only 21 way to know what we had was to get information from the FBI. So I can't remember, I think it would have,

sometime at the end of May or early June I know that

Lieutenant or not Lieutenant, Sergeant Sifner met with

Do you know if the Commissioner ever Q: interfered with it?

A:

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Do you know if anyone in the FBI ever Q: interfered with it? No that they would ever do such a thing.

A:

Okay. Well, do you know whether there are state politicians mentioned in that investigations? Elected Officials sir. Do you know whether there was a Pennsylvania State Senator mentioned in that investigation?

I have to think about that one for a 13 minute sir. 14

Do you know a Senator Leonard Bodack 15 sir?

> I don't know him. No sir. A:

Do you know whether he was mentioned O: in that investigation? 19

I think he might have been.

Q: Okay. Do you have a recollection of any state representatives that may have been mentioned in that investigation? 23

A: I think there was a referenced made to a Representative from the Pittsburgh area, but I don't know

ł	the name.	•	
2		Q:	Preston, something like that? Do you
3	know?		
4		A:	Could have been.
5		Q:	Well when this FBI product came in you
6	say there	was :	some tapes and stuff in there and you ha
7	to do you	r own	transcription?
8		A:	Well what ended up happening I think
9	there was	s like	twenty-one or twenty-four tapes, and the
10	administr	rative	officer in our, well the administrative
П	assistant	type	d some of them up and I think there was
12	another s	secret	ary that was involved in typing those up.
13		Q:	Why?
14		A:	Why?
15		Q:	Yeah
16		Á:	To have a transcript of what's on the
17	tape.		
18		Q:	Why didn't you send it out to the
19	Organize	d Cri	me Division? I mean so if I understand
20	what you	ı've to	old me correctly, somebody from the
21	Organize	d Cri	me Group brought it up to Harrisburg an
22	into you	r offic	e.
23		A:	No, Internal Affairs brought it. The FB
24	turned it	t over	to Internal Affairs and they brought it to
25	me.		

l	reason?
2	A: Well the reason being as the acting
3	Director and running my section I don't have the
4	time. That was delegated to the Internal Affairs
5	West. They would have to arrange, this was
6	western Pa. They would have to arrange a meeting
7	with them, getting information, and documenting
8	what's going on with the Stanton thing.
9	Q: Okay. Did Mr. Wertz or Mr.
10	Williams come in and review any of this stuff?
11	A: Review any of this?
12	Q: Sure
13	A: Yes, the transcripts that we made
14	from the FBI tapes, yes.
15	Q: Okay. Alright, when did you get this box?
16	Is it Dana brought it up? Sergeant?
17	A: Sergeant Seifner
18	Q: Seifner, Dana Seifner.
19	A: And she's now retired.
20	Q: God bless her. Did Sergeant Seifner she
21	brought these up to Harrisburg, and do you remember
22	when that was?
23	A: Not to my recollection on that sir. It
24	would have been like late May early June.
25	Q: And it was before the control number was

	Q:	Okay	
	A: .	It was	s dropped on my lap.
	Q:	I see	
	Α:	More	like, here's this box of stuff
	Q:	That	must have been fun.
	A:	and t	he FBI's out of it kind of thing.
,	Yeah, and I'm	like wl	nat the heck do we have here.
	Q:	Okay	. So in order for you to properly
,	evaluate it you	neede	ed to look at this FBI work product,
,	investigatory p	roduc	t.
ı	A:	Right	L .
2	Q:	Now	do you know at that point whether
3	Mr. Stanton w	as awa	are that he had been investigated?
1	A:	I dor	't know that.
5	Q:	You	didn't listen to the tapes you had
6	them transcril	oed?	
7	A:	Righ	t
8	Q:	Did :	you call up Mr. Kush?
9		A:	No .
0		Q:	You did not. Did you talk to any
1	FBI agen	its?	
2		A:	No
3		Q:	May I ask, I'm not suggesting you
4	should h	ave by	the way, I don't know. Is there
25	some rea	ason w	hy not or would there have been an

1	put on to the ir	vestigation into Mr. Ober, right?
2	A:	Before Mr. Ober, yes
3	Q:	Okay. Now how long did it take you to
4	transcribe thes	e tapes?
5	A:	It was a time line probably of, I'm
6	thinking a wee	k to two weeks.
7	Q:	Okay
8	A:\	I know it was like, I think it was like
9	mid-June befor	re they were done.
10	Q:	So before the control number, well let me
п	ask a question	. Did Mr. Wertz and Mr. Williams come in
12	and look at thi	s stuff before a control number into Ober
13	was put on it?	
14	A:	I'm not sure of that sir. They could have.
14 15	A: I'm not sure.	I'm not sure of that sir. They could have.
		I'm not sure of that sir. They could have. Well some time on
15	I'm not sure. Q: A:	Well some time on I mean they didn't like tell me when they
15 16	I'm not sure. Q: A: were doing this	Well some time on I mean they didn't like tell me when they ngs. You know, I know the tapes were
15 16 17	I'm not sure. Q: A: were doing this	Well some time on I mean they didn't like tell me when they
15 16 17 18	I'm not sure. Q: A: were doing this	Well some time on I mean they didn't like tell me when they ngs. You know, I know the tapes were ed up. When they actually looked at those
15 16 17 18	I'm not sure. Q: A: were doing this done, were typ	Well some time on I mean they didn't like tell me when they ngs. You know, I know the tapes were ed up. When they actually looked at those Okay. That's alright.
15 16 17 18 19	I'm not sure. Q: A: were doing thir done, were typ I'm not sure.	Well some time on I mean they didn't like tell me when they ngs. You know, I know the tapes were ted up. When they actually looked at those Okay. That's alright. I'm sorry
15 16 17 18 19 20 21	I'm not sure. Q: A: were doing thirdone, were typ I'm not sure. Q: A: Q:	Well some time on I mean they didn't like tell me when they ngs. You know, I know the tapes were ed up. When they actually looked at those Okay. That's alright. I'm sorry That's okay. If you don't know you don't
15 16 17 18 19 20 21	I'm not sure. Q: A: were doing thirdone, were typ I'm not sure. Q: A: Q: know. Now, se	Well some time on I mean they didn't like tell me when they ngs. You know, I know the tapes were ted up. When they actually looked at those Okay. That's alright. I'm sorry

There are really two investigations in progress. One into Stanton initiated by a complaint that came from Captain

A: Correct

> and one into Captain Ober. Q:

Correct A:

Well, did anybody every tell you what O: Ober had supposedly done wrong that warranted an investigation? Did you ever ask? Did anybody ever say what the Commissioner wanted to investigate him for?

A: No, the only thing that Major Conley told me was that the Commissioner wanted an investigation to get the facts on what happened with this FBI, whatever you want to call it, probe or FBI investigation into Stanton kind of thing. I wasn't a part of any meetings or anything like that. That was just told to me by my boss.

Q: Well did you ever tell any of these people that what they were doing was wrong?

A:

Did you ever express any opinion to O:

22 them?

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I mean I didn't have the facts. I mean A:

> I'm not say you should have sir. Q:

I understand A: 25

don't worry about it. Everything will take care of it's self,

and I know I mentioned to him that I had talked with the investigator briefly. I was kind of making light of the situation caused I had mentioned to him they weren't gonna give him the legerity warnings or something to that effect. I kind of ended it there and I left it alone cause I thought we both, you know we both, and Captain Ober went out of his way to keep me out of this. So it was kind of like bits and pieces of conversation. I had kind of chuckled when I mentioned that because Major Wertz and Major Williams were Area Commanders, and as Area 11 Commanders I don't know how long since they did an 12 investigation but the process they were using was created 13 by Captain Ober. The process called garidy warnings. 14 This was an agreement to my understanding he made 15 with the union. I kind of chuckled because you're gonna 16 have to follow the process that he made. 17 18

Q: Okay, but what. Okay I understand that. And you're passing this on to Captain Ober more or less.

A:

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Q: I guess what you're describing to us to 21 some extent speaking in tongues. 22

A:

Sort of the way the people do when they Q: 24 don't want to address and tip-toe around the point more I'm not saying you did.

But no A:

It's not my role. I'm not sitting here in Q: judgement of you. I'm just asking questions here.

I mean I don't know what was done.

Q: Yes sir. I don't want you to think that I have, I'm probably, I'm not good enough of a lawyer I guess that I can't hide feelings about things very well and I apologize to you for that. But I don't want you to think I'm sitting here being critical to you.

A: I'm not taking it that way.

O: Okay. I just have to ask these questions 12 it's my job. Okay, did you ever have, do you have a 13 recollection Rick of having a conversation with Darrell Ober about the investigation into him or anything relating to the investigation into him?

A: Yes I had a conversation with him it was 17 very brief. I think it was over at the IIMS building, and 18 Captain Ober and this happened more then one occasion. I'm think maybe twice. He said to me just hey I didn't do anything wrong, and I just, my response to that would be well then what are you worried about. If you didn't do nothing wrong don't. I know he's still gonna be my Captain. I'm still his subordinate. We work together. I'm encouraging the men. Hey if you didn't do nothing wrong

or less.

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A: Right

> O: Is that fair to say?

Yes sir it was kind of that. It was kind of

Awkward O:

Right it was very awkward, and I could A: tell it was awkward for him too.

Okay. How did it come up?

I think it came up like I said initially he A: said to me I didn't do anything wrong.

Q: He sees you. He passes you. Let me lay a little foundation. Captain Ober at all time has always treated you with respect and with, you know respect and affection. It's fair to say that the two of you were not just in a relationship were he had title and position and you had title and position, but obviously between the two of you there was a decent honest proper repore that was a good healthy thing. Is that fair tot say?

> Yes sir. A:

Q: Okay

A: In both ways, absolutely.

Yes sir, and he had certainly never been anyone who had obstructed or harmed you or interfered, and you never had the impression that he would interfere with your career plans or anything like that.

A: No sir.

Q: And put frankly those kinds of feelings, that feeling of respect was reciprocal. You felt the same way towards him.

A: Absolutely

Q: Alright, and has someone's who's obviously a sensitive and intelligent individual you had your ambitions and you had your proper respect for duties and indented to perform you job correctly.

10 Correct?

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A: Correct

Q: And you would expect no less of him?

A: Correct

Q: Is that fair to say?

A: Yes sin

Q: Alright now with that situations people
who are decent respectful friends and respect each other
in an organization which is how it should probably
ideally be at all times. How did this I didn't do anything
wrong, I mean did anything preface this comment I didn't
do anything wrong? What or how did it come up? I
mean after all he

A: Well you know what I'm thinking.

O: Go ahead

A: I'm thinking it came up cause Captain

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Conley talked to you. A: Alright so what did you do with that O: stuff? What I did with the paper? A: No, your recollection is he gave you Q: something. A: Right And it's not clear to me yet why he did that, but it's your testimony that he did that. What did ìô you do with what he gave you? 11 I put it in with the file. A: 12 Well didn't you call Mr. Williams or Mr. Q: 13 14 Wertz and say here? Yes. I did that too, yes. A: 15 Okay and what did they say to you? 16 Nothing 17 A: Did they ask you what Ober said? Q: 18 19 A: Did you make an admission, did Mr. Ober 20 make an admission against interest? 21 22 A: Nothing like that? O: 23 No. I think what I did with that is when 24 Captain Ober, cause by regulation he's required to

Ober, I'm gonna go back to, I'm gonna say May, June. I think he gave me a videotape. I think he gave me a videotape and he had given me something. I don't recall exactly all what it was. Maybe part of a report, an FBI report, a tape. There was a couple items he gave to me. Q: What was that about? A: I think that had in relation to Stanton, to the Stanton issue and also he had said to me that he was gonna give me a supplemental report. I think that might have been what prompted this conversation, because I was over at the IMMS building and I don't remember if I was something from him something else, but I know he gave a report. It wasn't on an Official State Police form. He had put the Stanton control number and it was typed up. It wasn't dated, and it talked about his contact with 15 the FBI so on and so forth and I got that from him. I'm thinking that might have been you know I didn't do 17 anything wrong kind of thing. 18 Q: Okay, but that would have been something that occurred after Williams and Wertz? 20 A: After? 21 Sure. After you will aware that Williams O: 22 and Wertz were looking into the case. 23 Oh that, ves 24

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Okay and it would have been after Mr.

document this sort of thing, and I think he was fulfilling his obligation by preparing this report to make it a part of the investigation into Stanton. When I got that I remember sending a copy to Major Williams, I believe it Q: In other words what he was doing was he faxed this complaint form in. So what he's doing is giving you what he's got whatever it might be that is connected to or would support this complaint form. A: Well the worksheet he submitted was very, it was just a paragraph. Q: Okay What he gave me, I think it was two 13 pages. Or at least a page and a half to two pages of 14 information that wasn't on the complaint sheet. 15 Q: Right 16 A: But it was more specific stuff. 17 Sure, but it was a follow-up to the Q: complaint sheet 19 20 A: Yes Right that he faxed you. Q: 21 A: Correct Alright. So there was nothing secret or O: improper on either on of your parts. That's something that was obviously become part of the Stanton thing,

right? Correct A: Okav. TONY MARCECA: 5th of March, 2002, we're back on camera. The break was from 10:15 to 10:40.

MR BAILEY: In this box that came up, how many tapes were in this box? If you remember. You said something like about dozen. Something like a dozen or something.

MR BROWN: It was, I'm not sure of the exact number, but I would say between twenty and twenty-

> O: Okay

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- A: Somewhere in there.
- Why were there two investigations? If Ω : you know that answer to this of course. Why were there two investigations an investigation into Ober and an investigation into Stanton now at this point?
- The Stanton investigation, well at the time, we didn't know what we really had. So there was gonna be an investigation into that. Then the other, my understanding is that the investigation or inquiry was at the request of the Commissioner as far as the facts and circumstances surrounding the FBI thing.
 - Q: Now at some point was there a BPR done

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To the best of my knowledge sir, yes.

Okay. Well do you know why the Feds O: didn't prosecute Mr. Stanton?

- I don't know A:
- Do you know whether they ever did?
- The only thing I know is that our BCI brought, Bureau Criminal Investigation, Organized Crime Division brought Charges against Stanton.
- You do know if the FBI ever investigated 10 him?
 - Stanton? A:
- Yeah. I don't mean investigated, ever O: 12 charged him. If he were charged on a federal, did any 13 Federal Grand Jury ever bring him in? 14
 - Not to my knowledge, no.
- Do you know whether the Federal Grand 16 Jury ever investigated or the FBI ever investigated the 17 Pennsylvania Elected Officials involved? 18
 - No. I don't know that sir.
- 19 Did you ever come to learn if the Federal 20 Bureau of Investigation did any investigation into, a 21 broader investigation into the Stanton matter then just 22 whether Stanton was involved. In other words, into practices in the Pennsylvania State Police Academy 24 appointment process anything like that.

on Stanton?

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Oh, yes sir. A:

sir, but it was completed.

- And that was initiated when?
- What had end up happening is that when A: Captain Ober on it, try to gather some information. BCI ends up investigating it. When the criminal prosecution then the administrative kicked in. The administrative investigation was done, I don't recall when it was done
- Q: Now Stanton ended up, I hate to use the term "beat the charges", but Stanton prevailed based on certain technical defenses as I understand it.
 - Yes sir. That's my understanding.
- O: Did those technical defenses have to do with the way evidence was handled by the FBI or the State Police? Do you know?
- From what I understand of this is that the FBI did wiretaps under federal standards and then when they turned it over our Pennsylvania Constitution or something to that effect give more right and privileges in that area. We could not use their wiretaps in a state prosecution I think is how it went.
- Q: Okay, and that had to do with the wires 23 that were wore by informants and that sort of thing Pennsylvania's warrant standards etc.

- That the FBI did?
 - Yeah Q:
 - A: No
- Q: Did you ever become aware of why the FBI shut down the investigation or ended it better yet?
- A: I think I got that. That was on the complaint sheet that Captain Ober summated. That they were done and was turning it over. I think that's, I was under the assumption that they were through with it that's why he was...
- Right, but my question is do you know why they were through with it? 12
 - A: Oh. no

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- Q: Why the FBI concluded it without prosecuting?
 - No sir, I don't. A:
- Do you know if there were ever any conversations between Mr. Evanko and Louie Freed?
 - No I'm not aware of that sir.
- I may be miss, I can't remember. You did or did not have conversations with the FBI agents 21 involved?
 - A: I did not speak to the FBI agents.
 - Do you whether Mr. Williams did? O:
 - I'm not sure if he did or not.

How about Mr. Wertz? Do you know 0:whether he did?

They may have, but I can't say with A: certainty.

Okay. You had indicated some Q: knowledge or experience with the evaluation process when a complaint arises. Let me more specific. A Complaint arise from a citizen.

Correct

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Q: and let's say it's one of these things you refer to as a demininis. You know the officer intimidated me. So you know out of respect for the civilian inquiry you do some checking into it or whatever. That's a process that has to do with evaluating the complaint, right?

> Correct A:

Now, initially on it's face there are probably many circumstances where you can tell that something is you know, general and rather demininis by nature. In other word a complaint comes in and it says the officer intimidated me and that's all it says. You pay it a proper respect and you check it out, right?

Well if it's from a citizen we'll send them the complaint verification. I've seen in my experience that when the complaint verification it is more specific

Correct A:

Q: Okay. Now what reasons, as you sit here today now remember we're not suppose to be talking after March of 2001.

> Right A:

But you know, which I object to but that's alright. Before March of 2001 what were the reasons as you sit here today? What were the reasons that occurred to you that justified looking into Captain Ober? What was it about? Use your own language. Tell us what it was about. What has he done?

A: Back then sir all I know is that Major 12 Conley told me that the Commissioner wanted a 13 gathering of the facts, get the information on what 14 occurred. I missed the second part of your 15

> Yeah what was the reason for it? Q:

A:

I mean, you're a bright guy you've been around for awhile you're a police officer. You're very articulate gentlemen, and you're a career officer. You're in the Pennsylvania State Police. That's your career and your life.

A:

You carry a lot of pride in that don't you? O:

> Uh-mum A:

then what we had, and it may articulate something that requires an investigation.

Q: But if somebody wrote into you and say the officer opened up the door, and I'm not suggesting anyone ever did this, but the officer opened up the door and pulled me out and slapped me and threw me back in the car. Now obviously prime affection right up front you're going to look at that and say if this is true that's serious, right? All other things being equal. If it's just a traffic stop for speed, and I swore at the officer and called him a name. He dragged me out of the car and slapped me and threw back in the car. Now you know, people shouldn't swear at police officers obviously, but that wouldn't justify, in a hypothetical situation now, wouldn't justify dragging them out of the car and slapping them and throw them back in the car, right?

That's correct.

Okay, now. So if you look at a complaint 18 like that on the face of it, one the officer intimidated me. You know it might be demininis and probably is. But if 20 he says he struck me, hit me, or assaulted me, or 21 something like that obviously you look at that and say hey you know, all things being equal if there isn't some reason for the use of force like that that's not proper and that's more serious. Am I correct?

Cause you should. Fine organization and you take pride in that, right?

> A: Correct

They're checking into a Captain over what? I mean, this is supervisory inquiry sir. You told us about that. You told us about those BPR things. You know, you investigate people for reasons. I'm trying to find the reasons, and then through all this litigation, I want to confess to you, I haven't found a reason. So I'm asking if you could tell me what the reason was.

A: Like I said sir I was given the comment from Major Conley as far as what others. I mean, I don't who all was involved. I mean, I don't know sir.

Q: Up until March at least, we don't know what you may have learned since then. Up until March 2001 you didn't know the reason the Commissioner wanted Mr. Ober investigated. Is that fair to say?

> Well A:

If so tell us. O:

> Right, the fair way to say A:

Q: Yeah

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is that the Commissioner wanted to A: ascertain the facts.

Q: Okay. Now do you know if there was any written information provided by the FBI as to why they

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did the investigation? What originated it?

A: On Stanton?

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Q: Yeah into Stanton

A: Yes I got a copy of their FBI report.

Whether or not it's everything that they have I'm not sure of, but I mean I have some stuff. There was some stuff, some documentation provided by the FBI to Lieutenant, or Sergeant Seifner excuse me.

Q: Well, do you know whether or not anyone ever ask the FBI why they went to Captain Ober as opposed to directly to the Commissioner?

A: I don't have any knowledge. I mean I didn't talk to the FBI. I don't know what

Q: When the FBI does an investigation and informs the Pennsylvania State Police what procedure do they usually follow?

A: Well it depends on what, I'll give an example. When I was a criminal investigator in Troop H I worked with the FBI on some bank robberies. It's just law enforcement agencies working together. We were familiar with the special agent in charge here in Harrisburg when I worked in the crime room, and if we had a criminal investigation. I can think of one case in particular. It was a bank robbery. We got information there was gonna be a bank robbery, and the suspects

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Q: Well, do you know whether Mr. Evanko ever indicated that there was an interest in the Governor's office when he talked to Mr. Campbell or people in the Governor's Office?

A: I don't know who Colonel Evanko talked to. I had no discussions with him.

Q: Okay. Did you read the FBI 302's?

A: You say the 302's is that their report?

Q: Yeah they do a

A: 10 The FBI you know, the most modern Q: investigative agency in the greatest nation on Earth. 12 They don't tape inquiries. They don't tape interviews. What they do is they take two agents and they sit down 14 with somebody and they take notes, and everybody in the 15 world wonders why they do that. No one can figure it out of course, but there's no record. So you rely on what the 17 FBI says was said. That's what happens, and then they 18 do a 302. Then of course if you try to get their notes to 19 back up their 302 they fight against that. Some day the law in the Unites States will change. Who knows, but at 21 this time they do 302s, and their 302's are a form that they use and that form is like the agent's, like a report 23 that you do. Do you have a recollection of reading the

302s in this matter when this stuff came up for Stanton?

were from Pennsylvania, leaving Pennsylvania to go to
Maryland, and we did surveillance. We contacted the
FBI. There was nothing special about the working
relationship. We were just fellow officers, and we did end
up making arrests on it.

Q: Well in this case do you have any information known to you that the FBI had some reason to go to IAD?

A: No sir

Q: Well, I mean you don't have any facts
known to you, which would indicate that the FBI for
personal reasons because they just liked him? It was by
virtue of the fact that he's sitting there as Director of IAD.
Is that correct?

15 A: How the hell they came up with him is 16 unbeknownst to me. All I know is at the time is what he 17 put on that work sheet was that he was contacted by the 18 FBI in '98.

Q: Well when you evaluated the Stanton
stuff when it came in you learned that there were
potentially elected officials involved that the FBI had
some probable to look at that, and didn't they mention
the Governor's Office?

A: I don't recall any mentioning of the Governor's Office.

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A: I have a recollection of looking through it yes.

Q: And you don't recollect any mention of

the Governor's Office?

A: No I don't

Q: Now do you have a recollection of the 302s mentioning elected officials?

A: When you mentioned earlier about

Bodack, I remember that name I think being mentioned.

I can't remember if it was in the FBI 302 or the transcript

of the intercept.

Q: Do you remember in any of the intercept or any of the wire? Let's do it the easy way. You don't have a recollection of the Governor's Office being mentioned anywhere.

A: No I don't

Q: Now if that had been mentioned would that have triggered any bureaucratic response? If the Governor's Office had been mentioned.

A: A bureaucratic response?

Q: In other words, would it effect how you would evaluate the information you had in front of you?

A: I would think so yes

Q: I mean it would certainly throw up a red flag that ut-oh what is this about because you know not

...

that there is any reason to expect at that time or now would do anything improper. That's a pretty high level thing. That's a pretty potent kind of an allegation I would

Yes. If I had saw something like that my first inclination would be to check with the FBI. Because my experience with the FBI would be why would they turn something like that over. If they got a high ranking official that they could be bringing charges against they're certainly not going to give it to the State Police or local law enforcement to pursue. The FBI's gonna take it cause they can get a lot of media coverage out of it.

Q: Rogue leftovers of J. Edgar Hoover I guess. Now let me ask you this. Do you have a recollection about any language about higher ups in the State Police being mentioned? Now not by name now, but that there could possibly could have been, you know that there were implications or allegations that maybe higher ups in the State Police were involved?

A: My recollection is I think it was mentioned "Lieutenant Colonel".

> Okay anything else? O:

I think that's it. I think it was A:

mentioned one time or something.

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And your best recollection is that... What

Q: You don't want my response to that. Okay now, what's a target of an investigation? What does that mean based on you experience as a trained police officer and an experienced investigator? What is a target of an investigation?

A: Like I said earlier, a focus. Someone that you're looking at for well like just use the Stanton thing. Stanton was supposedly involved in something, and he was targeted by the FBI.

Q: if you indicated to a fellow investigator that someone or some entity was the target of investigation, would you go and inform them that they were the target of an investigation?

> No I wouldn't A:

Why not?

Well you might be compromising the A: integrity of the investigation.

Q: Could you possible being exposing 18 yourself to criminal liability yourself depending on what 19 you did? 20

A: Depending on what you did and what's being investigated

Okay. Now then this FBI work product 23 came up to you. It was brought up to you by Dana 24 Seifner. You had it transcribed. You had everything

degree of certainty would you attach to that that it said "Lieutenant Colonel" as opposed to the question I asked you and the phrase "higher ups"?

Higher ups in the State Police?

O:

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I don't remember anything saying "higher A: ups". I do remember Lieutenant Colonel is what's sticking out in my mind sir.

Q: Now what's a target, if you understand? You've worked with the FBI, what do they mean when they say "target"?

A: The focus of an investigation

Q: Based on your knowledge and experience 13 it could mean a wide variety of things, but is it fair to say that it means that at least there's some interest and there may be some reason to investigate someone. If someone where a target of an investigation it doesn't mean that 17 they did anything wrong, but it means, doesn't it, that there is a valid investigatory reason to look at them?

You asking me about the FBI?

Yes the FBI O:

A: I would assume there would be. My experience with them is that they never lay all their cards on the table. I mean we work with them. I never sit down and say this is why we're doing this. Whatever.

done to it. At some time, I think you indicated that Mr. Williams and/or Mr. Wertz and they looked at that.

A:

Can you tell us sir, would that had been 0: before June 1999?

A: I think the transcripts were done like mid-June so they would have been available at that time. So it's possibly that they might have.

Q: But you don't know.

It's going on three years sir, I don't know

O:

if they looked at it before hand or if it was A: the end of the month or middle of the month. I'm not sure.

15 O: Now I want you to listen real close to this question. Is there any form, piece of paper in other words, which would indicate when and who would look at that investigative product or can they just walk in their look at it and leave?

A: There's no form, No, no sir. The only thing, I could give you an example. If a Bureau Director wanted to look at a report about something that occurred a couple years ago involving the operation of their bureau or whatever they could come over and look at it and the confounds of BPR, but we don't have them like sign in or

sign out. Or you might have an occasion where somebody might jot down on the file that somebody had an interest in it, but there's no formal process of doing that.

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Q: Well if Mr. Williams or Mr. Wertz or anyone else came in there to look at that FBI work product are they allowed to remove it? Can they take it somewhere to look at it? Are they monitored? You know, is there any kind of internal control or check keep on?

A: Well, yeah we kinda keep that information. Like for instance if your gonna look at the file you're gonna look at it in BPR. Like to give you an example of something and maybe this will help clarify it. You might have, say for instance I left the State Police and I wanted to apply for a job with the FBI. They would have me sign a release to obtain information about my background, to include any disciplinary actions or internal things that I might have been involved in. So then the FBI

Q: I'm sorry

A: That's okay, would do their background investigation and would want to access the file and look at my files. Well I've given them permission to do that and it protects the department. The FBI is not allowed to make copies. Their not allowed to take any reports with

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A: Not with...Well I know that when those transcriptions were done Sergeant Siefner had a set of them for the internal. I mean she had them for her internal investigation.

Q: Why not have Sergeant Seifner check into if there were questions. Cause you see we have this big question out there, what's the reason for this. Now if there were questions, Lord knows what they were, but if there were questions about Mr. Ober and the FBI investigation why not have the BPR assigned person do it?

A: I would think that would be an uncomfortable position to put the Internal Affairs investigator in, in light of the fact that Captain Ober he was detached but he was still the Captain for IAD. It would have been more appropriate to someone outside of Internal Affairs investigate that. That would be like my Lieutenant investigating me. We work together. They know me, and all of the sudden their gonna be like. It makes for an uncomfortable situation.

Q: Okay

A: So what we have to ask them to do is go outside of that.

Q: Okay. Now do you know if the FBI's role in investigating Stanton was ever looked at?

them. What they do they can come in and look at the information and then they don't take nothing with them. Q: Well how do you know they don't take something with them? Well we have, we put them in an office there. They sit in an office right outside of our office. We can see them. They don't make copies of anything. Q: Well who watched Williams and Wertz. I'm not suggesting they would do anything improper. Don't read that into the question, but who watched them when they came in and went through those files? 11 I didn't 12 A: Do you know anyone who did? Q: 13 A: Well they're Majors in the Pennsylvania Q: 15 State Police and you're not gonna challenge their 16 integrity, right? I had no reason A: 18 Q: I'm not suggesting that you did. Now 19 aside from Mr. Williams and aside from Mr. Wertz do you 21

know anyone else that came in and went through those files? If you do please tell me who.

A: I don't know of anybody else sir.

A: I don't know of anybody else sir.

Q: Well would you know if they did, if someone else did and if so?

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A: The BCI do all that. I don't know if that was a part of their criminal investigation or not.

Q: Well do you know of any questions ever raised about a lack of probable cause on the part of the FBI to do an investigation?

A: No sir

Q: It's fair to say is it not, although there were legal objections that sustained a dismissal of the charges against Mr. Stanton that factually at least given what was know to you he was certainly involved in talking about trading money for influence. Is that fair to say?

A: That's fair to say.

14 Q: Do you know what happened to Mr.

s Stanton?

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A: Mr. Stanton, after the criminal charges?

Q: After the criminal charges were dropped

and the after the State Police did it's internal.

A: Okay the last knowledge I have of him we're still in the process. There's still administrative action pending. I think in the form of arbitration and I believe, I'm not 100% sure on this, but I believe he's suspended without pay.

Q: Okay

A: So he's not working

Okay. Now are you familiar with the... Strike that. Chain of command in the Pennsylvania State Police. Did you ever contribute of have a discussion with anyone about submission of a change in the PSP

regulations regarding chain of command?

No sir A:

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Let me get back just a little bit Rick if I O: can to the conversation. You had a conversation, first of all you indicated that arose between you and Captain Ober where he said I didn't do anything wrong. I had asked you some question about that originated, how the subject came up. Is it fair to say you don't remember how it came up?

I don't remember exactly how we got on A: the subject, but it came up.

> Alright Q:

A: Briefly

But you don't remember how? Q:

No I can remember A:

Alright. Now during that conversation did you ever indicated that you had related to Major Williams and/or Major Wertz that you know you guys aren't doing this right or you can't do that? Something to that effect. Just something to that effect.

A:

So when do you not use an O: administrative warning process?

A: If you're just like, say for instance you're out doing an investigation say a shooting incident and there are troopers there that wasn't actually the shooter. Well you wouldn't give them an administrative warning. Just the person that was involved in the shooting. Cause basically all you're letting them know is that the information that you're getting from them can't be use against them in their criminal proceeding. It's strictly an administrative matter of the State Police.

Q: Yeah, but you told me that there's an 12 issue here of whether or not the Commander intends to 13 look at discipline. 14

And maybe I can clarify this for you A:

Q:

16 When a supervisory, the way it's been A: 17 done since I've been cause I was at them after him, was if 18 their was a complaint that came in and it said the 19 Trooper was belligerent on the traffic stop. Under normal 20 circumstances the Commanding Officer, put of my job is 21 to communicate with Commanders, and I would say hey 22 let's do it as a supervisory inquiry. I'll call the guy and 23 let him know. I'll tell him to be more careful when he's 24 talking to citizens. But the Commander may say you

Well do you remember when I asked you the few questions about the supervisory thing that some how Captain Ober had put this supervisory thing in

Right A:

Now did you have a discussion with Mr. O: Williams and Mr. Wertz about this supervisory investigation?

I recall speaking to Major Wertz, I believe, about the supervisory inquiry process.

Well was he asking you questions about O:

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11 it? Yeah, he just said... Maybe I did get a 13 chance to clarify before. Remember I was tell you that before we started this supervisory inquiry process we had 15 this other database and these other numbers. I think that was the process the Major Wertz and Major Williams was familiar with as far as dealing with supervisory issues. So I was explaining to him. I think one of the questions he asked me was about administrative 20 warnings. The administrative warnings Captain Ober developed this, and to my knowledge this was something

he agreed with with the Union. That in new supervisory

inquiries that these notices or warnings would be

provided to effected personal. I explained that to him.

know this is the fourth type complaint. So maybe he is being a little over baring maybe we need to make a full investigation out of it.

Well a full investigation though Rick is not a supervisory inquiry. I have loads of testimony on that. Right?

A:

But how was Ober turned into a full Q: investigation?

Well, let me finish my answer there. A:

O:

What the Commander is doing is he or A: she has made a determination that he is going to consider formal discipline in the matter with the repetitive conduct. So now instead of it being the normal we'll handle it at the Troop level now it's assigned to an IAD investigation. A full investigation cause that's what the disciplinary officer has to act on when it comes in.

Q: Yeah, but you know that in ever single on 19 of the examples you're given me, every single one of them, you've mentioned that the individual allegedly did 21 something. 22

> No I didn't A:

No2 Q:

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No, no. There are investigations done

were there is no misconduct alleged by directive, and there we have a category for non-complaint investigations. Non-complaint investigation are, I'll give you an example of one that I was involved in. When I was a criminal investigator I had a rape suspect. I had a warrant for, and he was suicidal and he fired a shoot in the direction of me and some other police officers. I never unholstered my gun. Then later on he ended up drawing done on us. Well the mere fact that I was present when that shoot was fired required an internal 10 investigation. No one alleged I did anything, but the 11 Troop commander at that time and determined that my 12 actions were justified. But certainly one of the things 13 investigations are designed to do are point out safety

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issues.

Just find out the facts. Q:

Right and there might be a training issue A: that results from that, a safety issue. Not only that a well being issue. Maybe one of us might have been effect physiologically about being close to gunfire. So there are investigation, I'll give you an example of another one, prisoner escapes. We got a prisoner in custody and some how the equipment malfunctions, the handcuffs brake, the guy slugs you in the head, and escapes. Well the police officer is basically a victim of an assault here, but

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I don't know this sir

I don't do fishing exhibitions. I gotta have reasons to file complaints, and I'm asking if you know if this was an incident. If this was an investigation into an incident was it into communication between Captain Ober and the FBI? Now, you may not know. Was that the incident or the facts that were being investigated?

Like I said I never discussed it with Major Wertz and Williams. I don't know what instructions they 10 may have had sir. They didn't share that with me. 11

Q: Did you ever any discussions about this incident or this investigation or whatever it was with Colonel Coury?

> A: No sir

How about with, is it Colonel Westcott? O:

Nah, I would never discuss anything. He was Deputy of Operations. No discussions with him no.

Well do you know who chose, did Mr. Williams or Mr. Wertz indicate who chose them to do the investigation? Or the did they say we're here at the direction of the Commissioner or something like that?

A: I think I was informed that they were investigating. I think Major Conley informed me that they would be conducting the inquiry.

we do an internal investigation.

Same thing with the incident. Am I

correct?

A: Right

Investigating a fact situation or a Q: incident. Did somebody explain at some time what the

incident was about the FBI coming to Ober that Ober

should be investigated for?

Not to me A:

Did you ever hear of any reason? Q:

A: No sir

And the fact is as you sit here today you 12 O: don't know of any reason. Do you Rick? 13

I don't know what the powers above me, 14 whatever reasons they had. I don't know that. I just 15 know I was told that the Commissioner wanted an investigation into the facts of what occurred. 17

Well okay, into the facts of what 18

Or the circumstance of what occurred.

In other words the circumstances of what 21 occurred in the communications between Mr. Ober and the FBI. 23

I mean that's an assumption

Well O:

occurred.

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For the Commissioner

Right 'A:

> Q: Okay. That's interesting

They're gonna be assigned to gather the

facts.

So he didn't say for the Commissioner?

I don't him saying it. I just recall I know Major Conley told me that the Commissioner wanted an

investigation. At some point and time, I don't know if it was then or days later whatever, but at some point he

mentioned to me that Major Wertz and Major Williams

would be doing it. I don't know all that other verbiage.

13 I understand. In other words he didn't

use the words " for the Commissioner".

A; Right

That you can recollect. O:

Right A:

Fair enough. Do you recollect if Strike that. Did Mr. Conley indicate the he had spoken with

Mr. Evanko?

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I don't recall him telling me that.

Okay do you have a recollection of him ever indicating that he was relaying this information to you in effect from the Commissioner himself or somebody

close to the Commissioner?

questions about conversations he had with Mr.

A: I don't know he got informed of what was gonna be done. Cause the Major in BPR comes under the Deputy of IAD. So I don't know who he discussed it with sir. I know he told me the Commissioner wanted an investigation.

Q: Okay. Why did you go talk to Mr.

Merryman?

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A: Why did who?

Q: You

OPPOSING COUNSEL: Uh

MR BAILEY: All no that's not privileged. No, no no come one. Mr. Merryman is an individual that you went and investigated and talked to. There's nothing privileged about that conversation. It's not an attorney, you don't represent him.

OPPOSING COUNSEL: The reason that he spoke to Mr. Merryman was again part of the investigation that was directed by the attorneys.

MR BAILEY: I strongly object. Obviously I don't want to get into a contentious thing about this you. I'm asking you to please consider, if your gonna tell this man that I can't ask him about conversations that he had or for that matter, under proper circumstances even ask you if the circumstances were relevant. But your gonna instruct him that he doesn't not have to answer

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all due courtesy, attorney work product the was certainly
not created or born with this particular litigation, but is a
process and procedure of long standing in the
department. Secondly, you recall of course that Major
Merryman and was deposed with regard to his choice to
testify concerning what if anything he said to or was
asked by Captain Brown. So therefor you have not been
excluded sir.

MR BAILEY: That's what takes this privilege away. Even if it existed.

OPPOSING COUNSEL: That's takes it away as to the Attorney/ Client Privilege with regard to Major Merryman. This is a total different doctrine of Attorney Work Product. So our objection remains, and it remains as to acts as well as conversation. Just to answer your MR BAILEY: Well when you went and talked...

MR BAILEY: Well when you went and tall Okay well I disagree with you. When you went and talked to Mr. Merryman where any of the attorneys present?

OPPOSING COUNSEL: Again the same objection.

MR BAILEY: The question is whether or not the attorneys were present. I think you have to answer that. Just tell me if they were present.

OPPOSING COUNSEL: He doesn't have to

Merryman? OPPOSING COUNSEL: If it was part of the investigation that we requested him to do, yes that's what I'm directing. MR BAILEY: Alright well, I very strongly object. Let me ask you some of the things you did as opposed to what you discussed did you deliver a affidavit form to Mr. Merryman? OPPOSING COUNSEL: He doesn't have to answer that. MR BAILEY: That's what he did. I'm not 12 asking what he said. OPPOSING COUNSEL: I think investigation 14 details would cover action as well as word. MR BAILEY: I think that you people are trying 16 to hide and obviously escape this lawsuit. I think what 17 you're doing is highly improper and I don't think you can run around and protect yourselves and protect your 19 clients by taking some investigator and calling that attorney product or work product or whatever you call it. Cause I don't think it is, and then when that person goes 22 and talks to somebody allegedly I can't question your investigator about it. I think that's OPPOSING COUNSEL: Alright Counsel with 25

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answer any questions regarding anything he did at our direction. I already told you that that was at our direction. He doesn't have to answer questions about MR BAILEY: Are you denying that you went and questioned Mr. Merryman? OPPOSING COUNSEL: He's not answering the question. MR BAILEY: Are you denying that you had any conversations with Mr. Merryman? OPPOSING COUNSEL: Same objection MR BAILEY: And are you denying that during the conversation you had with Mr. Merryman, are you indicating that the attorney where or where not present? OPPOSING COUNSEL: Same objection 15 MR BAILEY: Now I want to hear you tell me that you're not answering those cause you've been instructed by counsel. She's not testifying here. She's not under oath. Is it fair to say, and you have to answer this and if you don't I'm gonna call the judge. Is it fair to say that the group of question that I just asked you a few minutes ago, and I need a verbal response, you have not answered these questions on advice of these attorney here today. Is that correct?

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MR BROWN: That is correct sir.

Okay. I'm gonna move on to some other areas. TONY MARCECA: Mr. Bailey before we move on can we take this minute and change both tapes. MR BAILEY: Okay. Just take five minutes TONY MARCECA: It's 11:26 and we're going to go off camera to change the tapes.

TONY MARCECA: It's 11:26 on March 5, 2002. We put a new tape in and we are continuing the deposition of Captain Brown.

MR BAILEY: Rick I'm gonna a change. Completely change direction here one more time. I'm gonna go in the area of what I refer to, and I know you'll know what I'm talking about, the museum investigation. Okay?

> A: Oh, okay

Artifacts or whatever O:

Okay

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18 Just maybe. Cause your counsel had O: 19 asked me how much more time. I think we can finish up 20 in less then thirty minutes here. What do you know 21 about that? My understanding is a background, I'll give 22 you an offer here. That there was some type of 23 investigation into Captain Ober about either PSP 24 Museum of potential museum items etc. What can you

M-R-G-I-C-H

Mrgich, I think it Ukrainian. I had a friend named Grgich one time, a fine family. Okay, I'm gonna ask you, if my research serves me correctly Corporal Mrgich was an IAD guy.

Correct

Where was Captain Ober at the time this O: investigation was done?

> He would have been at the IIMS project. A:

He in other words was detached. O:

Correct A:

You know Judge Rambo, a very highly Q: 12 respected federal judge with a great deal of experience, I believed in certain cases indicated that detachment is not a permanent kind of thing you're still part of an 15 organization. Am I correct? In other words if you're detached to some duty you are still assigned to a certain 17 place at least for administrative purposed, although you may not be there physically work. That's really were 19 you're organization home is, i.e. sent out to some other sort of duty. It might not be even be related to what you 21 do, but he's attached from. In other words, he's actually IAD, but he's detached to IIMS. Is that correct 23

> A: Correct

> > Q: Okay

tell me about that?

What I recall about the was that there was a representation that some how that Captain Ober has used his position with the department to secure artifacts, State Police artifact, for his own private collection. That the people he was contacting were lead to believe were going to the museum Commissioner not to him personally.

> Okay Q:

Something along that line A:

Yeah, and before we go in to, I have a lot of question about this area by the way. Although I think they're rather perfunctory. Is it fair to say that the investigation yielded, in fact Captain Ober had not done anything wrong and it was unfounded?

That's correct to my knowledge.

Okay let me go back. Did you do that

investigation? 18

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Me personally? A:

> Yeah O:

No A:

Who did? Q:

Corporal Robert Mrgich from the Internal A: 23 Affairs Division. 24

> And that's M-R-O:

That's sounds right.

Alright. Why was Corporal Mrgich who was with IAD investigating Captain Ober who was with IAD.

A: The only thing I can... Each situation is a little different. This wasn't something, this was done as a supervisory inquiry. There wasn't allegations that Captain Ober committed any crimes. It was a low-level kind of thing. Were as the other situation, who knows

what could have came out of that.

Yeah O:

A: it could have been a bad, I mean I don't. The supervisory into the museum thing was low grade.

> Compared to the FBI thing? Q:

A: Right

What could Ober have done? Was he disloyal to their Commissioner?

A: I don't know what he did.

Q: Is there a crime called disloyalty in the Pennsylvania State Police?

Not to my knowledge. I think there is something about disloyalty to the department, but I don't know where that is exactly. 23

Q: No pun intended and I mean that. It almost sounds distopalistic doesn't it? I mean disloyalty to the leader or something.

Like I said, I don't recall anything A: anywhere saying loyalty to the Commissioner. I think it's loyalty to agency, organization, department.

Q: Okay. What facts come to your mind when you say to me as response to a question, the museum thing is a minor little thing compared to that other thing, the other investigation into Ober? What was going through your mind?

> About the museum? A:

Yeah. What comparison were you doing? O:

Really I wasn't doing any comparison that A:

I can recall. 13 14

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No you probably weren't. Now to you the gravity of those two things was significantly different wasn't it? That's what you told us.

Well the thing is the Commissioner requested an inquiry. However two Majors got assigned. The deal with the museum, if my memory serves me right, I think Major Conley told me it would be best done as a supervisory inquiry.

> Q: Well

A: I mean it was something, I mean me personally, I mean I know Captain Ober collected thing. You know maybe it was a misunderstanding.

It's a little different thing.

Admittedly it that would be different. I'll withdraw the question. It wouldn't have any basis, I agree. Now do you know had initiated the investigation on the museum thing?

What I recall of that is, he's a retired I don't if he was a Colonel or a Lieutenant Colonel, but he's a retired guy, Trooper named Phil Conty. He sent correspondence to Lieutenant Colonel Coury. Then Lieutenant Colonel Coury, I think at that time, referred it over to BPR and then it came to me from Major Conley. I think that's how it went.

Q: Do you know whether anyone just called Captain Ober up and asked him what was going on? 14

> A: Oh, no I don't that.

You don't know how it was conducted or? Q:

How the inquiry was conducted? A:

Q: Yeah

I know that Corporal Mrgich interviewed Phil Conty and interviewed a couple of the women and I'm pretty sure he interviewed Captain Ober. 21

Q: Okay. Was there a, I'm having a hard time understanding why in the museum situation it was a... Well I guess actually your response to questions. I'm think of, let me stop doing that. I'm messing up this

So I wasn't looking at it like, Oh my God Captain Ober's getting artifacts.

Well if someone misrepresented their roles of State Police Officer that could be a crime though.

A: It depends on the situation of how they represent themselves. I mean he's a police officer. So he's not misrepresenting himself if he say I'm a Captain in the State Police. He is representing himself.

Q: Well it would be misrepresentation if you 11 say this is for some particular organization and it's for him personally. Don't you have an individual being investigated for that right now in the southwestern part of the state?

> A: For doing what?

For allegedly misrepresenting their role in purcuring artifacts or something or am I mistaken? 18

A: There is a member that was arrested for, 19 it wasn't to my knowledge securing, like what Captain Ober was doing. What he was actually doing was 21 removing State Police property, 22

> Wow O:

A: and selling it for a profit.

record. The museum investigation you had indicated that there was some decision made at some point that it was a supervisory inquiry kind of thing, whatever that is, right?

A:

Q: Alright hold on just one second.

MR BAILEY: Okay, it's a supervisory inquiry.

What' an administrative inquiry?

MR BROWN: Administrative inquiry is not defined in our AR-425. We don't have definition that says administrative inquiry. What it says is administrative investigation are inquiries.

> Q: Right

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Administrative inquiries into allegations A: of misconduct or into investigations by directive, such as the Commissioner's request, where no misconduct is 17 alleged.

Q: I wonder what's so special about, I mean who's the... I don't mean any disrespect.

A: I understand sir. I don't take any.

Q: Yeah. What's so special about the Commissioner? You know, if I'm in the Army and the Chairmen of the Joint Chief of Staffs comes down and he says he want some private investigated on a fire base somewhere, he has no more authority none, zero, and

- believe me he doesn't under the Army's system, okay.
- Has no more authority, no more weight, as a matter or
- fact he has less authority and weight then that private's
- Commander to initiate and investigation or even to
- punish. Can you tell me what, in the FBI investigation,
- what it had to do with Colonel Coury? I mean, I'm sorry,
- with Colonel Evanko. Do you know? I mean, that's an
- honest question. As you sit here today do you know
- what it had to do with him?
 - A: Nο
 - Okay. On the museum investigation Q:
 - Did I answer your question on that sir? A:
 - Yes sir, you did. No you did. You did. 0:
- You answered it perfectly. That's what I expected you to 14
- tell me. From what I know, I don't know what it had to 15
- do with him. I don't know what he was doing ask for this 16
- investigation. I don't know what lead to it. I don't want 17
- he asked. Do you know whether and questioned, you 18
- know just simply got a hold of Captain Ober and said 19
- Captain come on in here, tell me about this. What went 20
- 21

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- - Do you know when that ever occurred? O:
- A: 24
 - Okay. Did anyone ever indicate to you O:

- Well was Mr. Mrgich assigned by Colonel
- Coury?
- No. I probably gave that to him. A:
- You had a Corporal investigating a Q:
- Captain? Is that normal?
- Well you know in IAD they can A:
- investigate. 7
- I understand they can, but how normal Q:
- 9 or?

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- It happens. A:
- It happens? Q:
- Yes it happens. A:
- Okay. The supervisory inquiry is a 13 O:
- creator of regulation, defined and described by 14
- 15 regulation, right?
 - A: No
 - It's not. O:
 - A: No
 - Supervisory inquiry isn't?
- A: No sir. This was something that what I 20
- recall, I'm pretty sure this was Captain Ober's brainchild. 21
- It was something that was gonna be part of a special 22
- order. Cause when he went to IIMS I has to pick up on it 23
- to try to finish it. So it never, I mean it never got signed 24
- 25 and put in to practice, but it was being field tested during

- the Mr. Conty was trying to encourage or looking for
- complaints against Captain Ober? Did anybody ever
- indicate that to you?
 - A:
- Q: What about Colonel Coury? Did Colonel
- Coury become involved in the museum investigation at
- all?

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- The only recollection I have of him
- besides, I think Phil Conty sending the correspondence to
- him. I think he would have been the adjudicator. I think 10
- he was the adjudicator of that.
 - Q: Is that proper?
 - Well I mean, normally if, I'll give you an A:
- example. If I'm a Troop Commander and someone in my 14
- command had an investigation on them, normally the
- Troop Commander would be the adjudicator. Unless 16
- they're somewhat involved in the investigation or
- complaint or some sort. I've seen situations where
- depending on what was under investigation, I think the 19
- Deputy Commissioner of Administration can designate
- someone to adjudicate a case. So I mean it's not hard 21
- and fifth and in every situation it's gotta be this person or 22
- that person. There occasions where Deputy Admin. Can
- say that this person is gonna adjudicate this particular 24
- 25

- that time.
- O:
- I mean there's been a couple hundred of A:
- them.

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- Supervisory inquiries? O:
- Well back when that was going on, I
- think back around that time we had like a hundred and
- some of them.
 - Do they have number assigned? Q:
 - Yes sir A:
- Because when you told us this 11
- investigation that was done at the Commissioner's
- request until this I guess some how by accident or in
- passing the issue of ut-oh there's no number here, until
- that come up it didn't even have a number from what you
- told me. 16
 - Right and as far as ut-oh I don't think A:
 - Okay. Can I take my ut-oh back?
 - Supervisory inquiries?
 - Well back when that was going on, I
- think back around that time we had like a hundred and some of them.
 - Do they have number assigned? Q:
 - Yes sir A:
 - Because when you told us this Q:

investigation that was done at the Commissioner's request until this I guess some how by accident or in passing the issue of Ut-oh there's no number here, until that come up it didn't even have a number from what you told me. Right and as far as ut-oh I don't think A: Okay. Can I take my ut-oh back? O: Yeah Major Wertz kind a said A: Did he us the word "whoa"? Q: Well no A: He didn't? Q: 11 Well I don't remember using a whoa, but I A: 12 think what it was, the context of the conversation was I 13 don't think we took a number for this. Then I said 14 something the Major Conley about what they were doing, 15 and he says it an investigation at the request of the 16 Commissioner. I wrote it up, put the number on it and 17 gave it to them. So that the Tracking would be there. 18 Q: 19 Whether I was right or wrong, that's for A: 20 somebody else to judge. 21 Q: No, no

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A:

101

were right of wrong. At least somebody put it in the

I thought I was doing the right thing.

I certainly not in question whether you

O: Well did somebody get back to Mr. Conty and ask him why he said this and what it was about? A: I'm pretty sure Corporal Mrgich interviewed him. I think he was interviewed about his complaint letter. Okay. Do you remember, if you recollect 0: 7 what his response was? Oh no I don't. A: But that would be in the file, if we ever 10 get them. I mean that would be in there, right? 12 A: Okay. In a supervisory inquiry...Strike that. Full investigation, full you know the big jobby. 14 15 Okay The big one. In a full investigation can 16 the individual say I refuse to respond or answer? 17 They can, yes 18 At that point can the investigator say 19 okay and read you your so called administrative 20 21 warnings or rights whatever. Then if the person still refuses to answer technically it can be insubordination 22 and they can even be dismissed. Am I correct? 23 Well 24 A: 25 Correct me on that. Tell me

system. But you seem to be telling me now, if I understand you, and not that it's different from anything that you said. I'm not impeaching you here. My understanding is then you did this, was it at the request of Mr. Conley? Which? A: To fill out that form. Q: No he didn't request me. I just did it. A: Cause it was the right thing to do? Right A: So you weren't asked to do it by Williams. Q: 11 You were not asked to do it by Wertz and you were not asked to do it by Conley. You were not asked to do it by Coury. You were not asked to do it by Westcott. You were not asked to do it by Evanko. Sitting here A: lб There was no request. It was just you . 17 being a responsible person in that position and said I 18 better do this. 19 20 That's basically what happened. Okay. Right now, do you know whether 21 there a complaint verification on the museum thing? 22 A: I don't think there was a complaint 23

102

verification form, but there was a complaint verified in

written by Mr. Conty. Which is our policy to except

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What would have to happen is the investigator would have to report that to somebody like me, and then what may be the next step in the process would be to get in touch with the individual's Commanding Officer and have an order issued. A written order saying you will cooperate with the investigation. Then once that's done and they're served with it and they didn't comply then there could be an investigation for insubordination, well there could be a lawful order. I mean it would be a very simple investigation, here's the lawful order he did comply, and discipline could result of it. Whether or not it would be termination or not the way 12 our system is set up that would go before an arbitrator and the arbitrator would decide whether the person. I 15 mean the department can move to dismiss, but it's up to the arbitrator whether or not the person's actually 17 Q: Do you know whether Mr. Wertz and Mr. 18 Williams interviewed Captain Ober at sometime? Α. Oh yes 20 Okay. Now did you ever listen to that 21 tape of that interview? 22 A: No 23 O: Was it taped? 24

I believe so. I believe so cause I think he

asked to barrow a tape recorder. I think Major Wertz or Williams asked to barrow a tape recorder from either me or one of my guys.

Q: Where did they do the interview?

A: You know I'm not sure. I'm not sure where they did his interview.

Q: Do you know that the... I remember reading State Police regulations abut supervisory inquiries. Did you say that wasn't written into the regulations?

A: Let me give a little background.

Q: Yeah

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A: First of all AR-425?

O: Right

A: It came out in '93. When I first came to BPR in '94 my Captain, Sam Gore at the time, was like we got to rewrite 425. This thing has be in the revision stage for nine years now, and even with the discipline committee we're try to hammer out these different things. So what happened with the supervisory inquiry when Captain Ober left I pick up on it. I basically had a meet with the Union. It was a monthly meeting, and kind of hammered out, just fine-tuned it a little bit and it was getting ready to go to press.

Q: But it had been in the

105

Q: So did he deserve what he got then? Is
that what you're telling me?

A: Well I'm not telling you at all. I just
saying that he developed the process, and that was the
process to my knowledge that they choose to follow.

Q: Well where was the process written
down?

A: It was written down in a draft form. We

Q: Okay

had a draft.

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was his idea.

A: Of a special order

O: Okay

A: But it had, matter of fact it did go to Research and Development. It did go over there.

Q: Okay. When?

A: I want to say, when did it go over?

During this time frame I had a lot going on and I'm trying to remember. Cause it did have a whole lot to do. I met with the PSTA. They hammered it out. I'm think the later part of the year of '99 maybe. It may have went over there, cause Major Merryman, I recall seeing a blank slip with Major Merryman's name on it. I thought, and something in the later part of '99 maybe. But then what

happened, what in effect happened, I was at the

worked
Q: Well but my question sir, not to interrupt
you. But my question is was it in writing in some form in
426 before you put it in?
A: No
Q: Okay
A: It's still not in writing in 425.

It was being worked yes. It was being

9 Q: Where is it in writing?
10 A: Just the draft that Captain Ober gave me
11 and then what I ended up continuing to put together.
12 But it was never

Q: Then other then a full investigation what were the regulations that governed the actions of Mr. Williams and Mr. Wertz in the early summer of 1999?

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A: Well AR-425 and basically what I informed them about the process that Captain Ober developed. I don't know if Captain Ober had got some authorization from the Major or from the Deputy or whoever, but that was something that was being done and still being done to this day.

Q: Are you telling us that Captain Ober
developed the process that was used to interrogate him?
Is that what you're telling me?

A: He developed the supervisory, I think it

106

discipline committee meeting and the Union in the new process we're developing wanted to do away with the supervisory inquiry. Says yeah we never, it's not in the regulations. Just do away with it. We're gonna come up with a new system. So that's the reason it wasn't pursued any further to my knowledge, but the Troop Commanders that I deal with they like it. They like it for dealing with for dealing with minor stuff.

Q: Well

A: I've been told not to use it. Put it that way.

Q: Okay. Who appointed Wertz and Williams?

A: Appointed them?

Q: Uh-hum

A: To the investigation? You mean assigned

17 them?

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Q: Yeah assigned them

A: I don't know who made that decision sir.

I wasn't a part of any. Nobody consulted me about

whether they should be the ones to do the inquiry or whatever. I was not a part of any of that.

23 Q: Well how many other investigation like
24 that do you know of?

A: Do I know as far as?

Q: Where somebody appointed investigator to investigate somebody and it's not its not done through

> Well maybe I can clear this up for you. A:

Q: Sure

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The Director of the Bureau of Professional A: Responsibility retains supervisory authority for all of investigations assigned to the bureau. My job as the Director is to pick that up in his absence or unless he delegates me to do that, but really it's his responsibility.

I'm not talking about responsibility. I'm talking about what's been done. What was done.

A: I guess the point I'm trying to make is if the Director of BPR has talked to a Troop Commander, say for instance, about a complaint and he calls me in the office and he says "hey I want this investigation done. I talked to the CO and I want this person to do it." It shall be done.

Okay. Are you tell us that Major Conley Q: 19 assigned Wertz? 20

That I don't know. I don't know. I don't A: 21 know how... 22

What situations, here's what my question 23 was. What situations other then Captain Ober and/or 24 IAD assigned investigators? Strike that. Let me rephrase 25

A: Let me and hopefully this clarifies it. Not all complaints

Q: Yeah, do you know of any other situations?

A: I mean I don't know. I mean the people from the field, I mean Internal Affairs isn't the only entity that does investigations.

> Into Pennsylvania State Police internal Q:

A: Right

o: Who does?

Well you have field non-commissioned officers in the field and even up to Lieutenants. 12 Depending 13

Q: To appoint investigators? Take people and say this is your duty to go investigate.

A: Right. Say for instance if a Troop Commander calls me and says I have a complaint on Rick Brown in my troop. I've assigned, he would tell, I've assigned Sergeant Joe Smith to do the investigation and I will just pen that information right on to the file.

> Yeah you enter it. O:

But that CO decided who was gonna investigate it. They don't ask me if it's okay. They say this is who I want to do it. The only time that I get to pick an investigator in my daily wick is when it's

that. What situations do you know of other then Ober where BPR and/or IAD did not assign investigators? I'd like to know. Then I'm gonna ask you question on what authority an Area Commander has, Colonel Coury has to assigning investigators to investigate people. Cause I want to know where it is in your regulations cause I can't find it. A: Let me just say this about AR-425. It's not all inclusive of everything and every circumstance or

situation you could come across.

Okay, but that's not what I'm asking you. 0:

A: Okay

I'm not asking you, now wait. Wait Rick. Q:

A:

I'm just asking you aside from Captain O:

Ober. 16

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A: Okay

O: Do you know of, cause see all of us can read 425 and try to figure out what it says. Ultimately a judge is going to decide. We're not gonna decide that the judge is gonna decide what it says. My question is aside 21 from the investigation into Captain Ober What other situations do you know of where investigators where 23 appointed outside of BPR or IAD and an investigation 24 was done somebody? That's all I'm asking.

110

assigned to the Internal Affairs Division where I have control of those investigators. Now when I was a Lieutenant I would designate which one of the investigator under me would do it, but as the Director I give it to their section Commander. They look at

caseload or whatever and they determine who gets the

work. I leave that up to their judgement. Q: You leave that up to them?

A: Yes. I mean if there's something the comes in, I'm not gonna say that's 100% of the time. If something comes in and I think, and I say this is something that I have a guy 12

13 So a field Commander can take some people assign them to investigate one of his people. They 14 15 don't even have to call you or tell you. Right?

Well they can actually do an inquiry before calling us, absolutely.

18 Q: Well, no no no. I'm talking about assigning investigators and have them go out and investigate somebody without letting you know. They don't even have to tell you, right? . 21

A: Well I'm trying to think the best way to 22 answer this. If a Commanding Officer gets a complaint and it's vague they may assign someone to go out and track down some additional information.

And you can call that an investigation or A: whatever, but it may be just trying to get some additional facts to determine whether it should come to us. If they get some information? O: Right A: So Colonel Evanko can tell us, he's the O: guy that started this thing, he got to be able to tell us why and for what reason he did this right? You have to ask him that. A: 10 Yeah, cause he'd be, I guess nobody else O: 11 knows. He has to be the guy that knows right? Yeah, he didn't consult with Rick Brown. 13 Okay. No he didn't consult with you. 14 Which attorney assigned you the so-called Attorney Work 15 Product investigation that's been discussed here? Who 16 was it? 17 OPPOSING COUNSEL: I don't have a problem 18 with it. 19 MR BROWN: It would be Chief Counsel 20 MR BAILEY: Barbara? Okay. Who told you to 21 take the copy of the Stackhouse investigation from 22 Captain Ober? Who told you to do that? 23 A: I don't remember if it was. Would I have 24

113

talked to Captain Skurkis about that. I don't know if

Q: But why was it taken back? Do you know what it was for? Why was it taken back? Why was it retrieved from him? A: Well actually he could have looked at it there anytime. We had no problem with him coming over to BPR and looking at that file. Do you know the defendants in this case? A: Do I know them? O: Sure iô A: Yes Did you ever have any discussions with 11 them regarding Mr. Ober's transfer to Washington 12 Pennsylvania? 13 14 A: No Q: Or purported transfer that never. I 15 guess, what's the penalty box? What is that? 16 A: That's just a term I think that's an 17 organizationally thing. You know guy's talk. I think 18 that, I'm just trying to think. If somebody perceives that 19 you did something wrong and you're assigned here or 30 you're doing something different that might be perceived 21 22 as you're in the penalty box. Q: Does that mean you're held in disfavor, 23 you're ostracized? 24

A: No

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Captain Skurkis was acting or if it was the Major. Q: Well didn't you tell Captain Skurkis or were you ordered by Skurkis to take the copy from Ober. Do you remember? A: I don't recalled per say. See there was things going on with Stackhouse that other people need to see the report. Like the investigator, Sergeant Rain. So for him to just be able to keep if for an indefinite time period would not be, I mean Q: Well somebody told you to go get it or do you have your own? Well I think it was Captain Skurkis. A: 12 Q: Why? 13 Cause there was coming up with her. 14 Through the Union they had filled a lawsuit, and there 15 was gonna be depositions and other people had to review to refresh themselves on what they did so they could be prepared for their deposition. That's recalling it the time frame. I remember Sergeant Rain coming to me saying "Hey am I gonna be able to look at the report", and that 20 was the only, I think he had the original which was the 21 only copy of it at that time. 22 Q: Did somebody say that Ober wasn't to 23 testify in that matter or wasn't to be involved in it? Α: 25

114

What does it mean? Well to me, what it means to me is really it doesn't have a lot of meaning to me because I treat everybody. Well, like in Captain Ober's case Q: Well no, I'm not indicated it has anything to do with you personally. A: I mean I can't speak for other people. Q: I'm not asking you to speak for other people. I'm asking you, Rick Brown, to give me an honest 10 definition of penalty box means. I mean being in the doghouse. Is it like being in the doghouse? A: I cause you could say that. 12 Well what would you say? Could be in the doghouse. 14 Q: Alright. Do you have any recollection of 15 any discussion with any of the defendants regarding Mr. 16 Ober's transfer to LCE? 17 18 A: Nο 19 Q: Did you do an Internal Affairs 20 investigation into allegations of misconduct involving Lieutenant Colonel Westcott and Trooper Mark George? 21 22 A: Yes

It was an anonymous compliant number

What was the complaint about?

one, and it worded in such that it was implied that it

could be criminal. It had to do with supposedly Colonel Westcott was in the process of getting his pilot's license, and Mark George was a pilot. The allegations were that using state time to fly, and become licensed while he's working kind of thing. O: Alright Something to that effect Okay. Did Westcott and George know Q: , each other in fact? To my knowledge they knew each other A: 10 yes. 11 Did you ever have any problem arranging 12 an interview with George? 13 With George? 14 A: Yeah O: 15 No A: 16 Okav o: He was stationed up in like around 18 Wyoming. 19 Did you ever discover any facts indicating 20 that George had been tipped off by Mr. Westcott? 21 Tipped off about? 22 A: Q: Anything 23 About the complaint? A: 24 Whatever O: 25

117

I know all the facts. Well do you have any opinions? You're 2 aware of the efforts made by the Pennsylvania State Police which failed obviously to transfer Mr. Ober to Washington County, correct? You were. Yes A: You're aware that he was assigned to a Lieutenant position in LCE. You're aware of that aren't vou? You're aware of some of the grievance 11 issues over like expenses and his telephone, aren't you? 12 13 A: I heard O: Some awareness 14 15 A: Yeah some awareness O: Right. Is Captain Ober going anywhere in 16 17 the Pennsylvania State Police? Is he doing what? 18 Is he going anywhere? Is he pretty much 19 at his career end do you think? 20 21 I certainly don't think he's at his career end. He's a Captain already. He's got one more jump to 22 make to Major and even with his time on him. He came 23 in a couple classes after me so he's got probably twenty-24

one years on. Close to twenty-one years or He'll have

You have recollection of learning or receiving information that a group of cadets was retested at the academy cause a applicant named Colleen Young failed her physically testing portion of the process? A: I don't, like I said hear say kind of thing. I don't know how mentioned it, but I did hear that somebody was retested, but I don't know who it was and Q: No, that a whole group was retested to 10 protect the person. 13 A: A whole group? Yeah 13 Q: A: I just hear about some retests but I don't 14 know who they were and why. Do you know who Colleen Young is? O: 16 17 A: Do you think that, do you have an Q: 18 opinion as to whether Darrell Ober is acting properly in 19 bring this complaint? Do you have an opinion about that, a personal opinion as a colleague and as a 21 Pennsylvania State Police Officer? 22 You mean bring the lawsuit? 23 Yeah O: 24

118

I kinda, my opinions will be formed when

twenty-one years. Who knows he might be friends with the next Governor and be the Commissioner. So I don't think his career's over. Q: You ever indicate to any body that he was over doing it? You know he's lost control or anything like that. 'Did you ever say that to anybody? Not that I recall, no. I'm gonna read you a letter. It's got a date on it, which is before March of 2001 okay. It says: Captain Ober where do I begin. Through adversity you stood talk for your beliefs. You're a winner. Let know one tell you differently. I'm proud to have serve with you. You taught me, lead me, and supported me through some very difficult times and have been a loyal friend. You have protected me and provided me with opportunity. Thanks Captain for your trust, confidence. and faith in me during some difficult times. I will never forget what you have done for me. Hopefully one day we will work together again. I can't begin to tell you what it meant to me to see you and Kim at the ceremony. I'll never forget your support. Thanks again Captain. 22 Thanks Kim, Rick. You write that letter? I recall that, yes 23 A: 24 Why? Why did you write that letter? 25 Well through out this time period, when

Captain Ober before he went to IIMS he offered me training opportunities. Well he did things a boss would

Okay. I'm not trying to embarrass you.

I don't feel embarrassed

No, but I just want you to know I'm not. Let me just do this this way. Did Captain Ober ever do anything to harm you?

> A: No

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Alright. Is it fair to say that you believe that if you did something wrong and were deserving of discipline that Captain Ober would discipline you?

Oh, yes. I believe so.

And you're probably the kind of person if you look in a mirror, is it fair to say the you believe that if someone who were within your command or you had a duty to supervise if they did something wrong you would treat them fairly?

> A: Correct

And how many years you've been in the O: 20 Pennsylvania State Police? 21

> Twenty-one years A:

Based upon knowledge you have was it 23 fair to send Captain Ober to Washington Pennsylvania? 24 Based upon what you know. 25

121

Twenty-one Twenty-one. Twenty-one years in the Pennsylvania State Police. How many times has a Captain been assigned to a Lieutenant's position in the Pennsylvania State Police during your twenty-one years 5 that you can tell me? A: I don't know Have you ever know of that? Me personally I haven't, no. A: You have no knowledge of that ever 10 happening aside from Captain Ober? Now you're not H questioning that it happened to Captain Ober? 12 13 No, no, no, no. I'm just say, you said except him. 14 Q: Right 15 Nah I 16 A: Except for him you don't know of that Q: 17 ever happening. 18 A: 19 Alright I don't have any more of you. 20 Your attorneys may have some questions of you. 21 OPPOSING COUNSEL: I don't have any. 22 MR BAILEY: Rick I'd like to express, he's 23 gonna shut the investigation. The investigation they we 24

But that's just it. I didn't know much. I don't know what the reason was. Well what do you know today, Rick? 0: Well, I don't know all the facts. You don't know all the facts? O: A: Well I'll tell you what, I'll wrote you a O: letter when all the fact are known and I'll ask you the question again. Okay? That's fine 10 You and I will have an agreement, 31 alright? 12 That's fine 13 Alright. Now what about assigning 14 0: Captain Ober to LCE? Was that fair, Rick? Do you know 15 enough facts about that to give us an opinion based upon your years with the State Police? 17 A: 18 Was it fair? 19 O: A: I don't have an opinion on that. Cause I 20 know there was some court action on 21 Q: Alright. That's fine. I understand you've 22 stressed your opinion. Now let me ask you this question 23 sir. Can you tell me how many years in the State Police? 24

122

I may not have heard you correctly.

I'd like to express my gratitude to you for coming in here and answering questions the best that you can. I sincerely appreciate your cooperation. Thank you. MR BROWN: Thank you sir. MR BAILEY: Tony you want to end this? TONY MARCECA: The time is 12:20 and it's the 5th of March. This now concludes this deposition of Mr. Brown. 10 INDEX 11 12 13

425: 24, 96, 106, 107, 110, 111 Artifacts, 90 ttorney work product, 8, 13, 31, 32, BPR, 17, 20, 21, 26, 30, 32, 35, 58, 64, 73, 75, 85, 95, 106, 110, 111, BPR number, 17 Bureau of Professional Responsibility, 5, 7,

Captain, 5, 7, 10, 11, 12, 13, 14, 15, 20, 26, 28, 29, 33, 35, 37, 38, 39, 41, 42, 49, 50, 51, 52, 54, 56, 58, 60, 63, 64,

65, 75, 77, 78, 79, 83, 87, 89, 90, 91, 92, 94, 95, 96, 98, 99, 100, 105, 106, 107, 110, 111, 114, 115, 116, 120, 121, 122, 123, 124

CLEAN message, 12, Commissioner, 12, 13,

Commissioner, 12, 13
14, 15, 16, 17, 18, 22,
24, 30, 36, 37, 39, 44,
49, 58, 63, 64, 65, 83,
48, 59, 09, 3, 94, 97,
99, 101, 102, 120
Conley, 15, 16, 17, 18,
19, 20, 21, 22, 25, 36,
39, 49, 55, 63, 64, 84,
85, 94, 95, 102, 103, Courv. 2, 18, 39, 83, 95,

department, 11, 41, 49, 74, 87, 90, 93, 105

Director, 7, 11, 13, 20, 22, 26, 47, 66, 73, 109, 110, 112 iscipline, 11, 35, 79, 80, 105, 106, 108, 122 FBI, 6, 7, 13, 14, 15, 16, B1, 6, 7, 13, 14, 15, 16, 21, 39, 40, 42, 43, 44, 45, 46, 47, 49, 54, 58, 59, 60, 61, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 82, 83, 93, full investigation, 81

George, 117, 118

IAD, 6, 7, 20, 23, 26, 27, 32, 35, 66, 75, 81, 85, 91, 92, 99, 109, 110, 111

go. He gonna shut the camera down and the deposition.

IIMS, 10, 11, 12, 37, 38, 39, 50, 91, 92, 100, 121 Incident Information Management System, 11 Internal Affairs, 5, 7, 11, 12, 13, 20, 28, 33, 39, 41, 45, 47, 75, 91, 111, 112, 137, 90, 111, 112, 117

investigation, 6, 8, 9, 11, 13, 15, 16, 17, 18, 20, 22, 24, 25, 26, 27, 29, 30, 31, 36, 39, 42, 43, 44, 48, 49, 50, 51, 56, 57, 58, 66, 62, 65, 66, 70, 71, 72, 74, 75, 76, 78, 79, 80, 81, 82, 38, 48, 85, 86, 90, 91, 93, 95, 96, 97, 98, 99, 101, 102, 104, 107, 109, 110, 111, 112, 113, 114, 117, 124

lawsuit, 6, 9, 87, 115,

LCE, 117, 119, 123

Merryman, 85, 86, 87, 88, 108 misconduct, 34, 81, 97, 117 misrepresentation, 94 Mrgich, 91, 92, 96, 99, 103

103 museum, 90, 92, 93, 94, 95, 96, 98, 103

95, 96, 96, 163

Ober, 2, 3, 5, 6, 7, 10, 11, 12, 13, 14, 15, 20, 26, 28, 29, 33, 35, 37, 38, 39, 41, 42, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 60, 63, 64, 65, 75, 77, 78, 79, 80, 82, 83, 90, 91, 92, 39, 49, 59, 96, 98, 100, 105, 106, 107, 110, 111, 114, 115, 116, 117, 119, 120, 121, 122, 123, 124 object, 7, 8, 31, 32, 63, 86

objection, 8, 9, 87, 88

Pennsylvania State Police, 3, 5, 28, 40, 41, 60, 64, 65, 75, 77, 93, 111, 119, 120, 122, 123 position, 4, 5, 7, 13, 16, 20, 52, 75, 90, 103, 119, 123 PSTA, 11, 108

Rick, 3, 5, 8, 20, 22, 24, 50, 77, 80, 82, 89, 111, 112, 114, 116, 121, 122, 123, 124

Siefner, 75 State Police, 3, 54, 58, 69, 70, 73, 77, 79, 90, 94, 95, 105, 123 Supervisory inquiry, 29, 100 System and Process Review Division, 7

warnings, 51, 79, 104 Westcott, 39, 84, 103, 117, 118

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER

CIVIL ACTION LAW

Plaintiff

1:CV-01-0084

PAUL EVANKO, MARK

CAMPBELL, THOMAS COURY,

JOSEPH WÉSTCOTT, HAWTHORNE CONLEY JOANNA REYNOLDS, and

SYNDI GUIDO

(JUDGE Caldwell)

JURY TRIAL DEMANDED

Defendants

PLACE:

MAIN CAPITAL

HARRISBURG, PA 17101

PROCEEDINGS:

VIDEO DEPOSITION

THOMAS CARR

DATE:

OCTOBER 12, 2001

APPEARANCES:

For the Plaintiff:

Donald Bailey, Esquire

4311 North 6th Street Harrisburg, PA 17110

Defendant:

Syndi Guido, Esquire

333 Market Street

Harrisburg, PA 17101

BEGIN TAPE ONE

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Testing 1-2-3. MR. BAILEY: Testing. testing, testing. Very quickly, because Syndi's getting used to it I But Trooper, so you know what we're going to do here today, ah, I do all of my depositions by videographer. We're going to do a videotape here today. We're making an audio recording that will be available to you or your counsel. I failed to tell the gentleman yesterday but your attorney knows, of course, the video is available to view if you want to. Yesterday there was a stenographer. there will not be. Ah, but if you have any question. We're going to swear you in. Tony will ask you do you swear to tell the whole truth nothing but the truth. You'll be sworn in, we'll go through the deposition. I'll ask you question and that sort of thing, I try to do

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things in a pretty relaxed was and, ah, maybe we'll wait till we stare 2 the deposition because it will be 3 transcribed. Then these things will 4 5 be there and available for you to 6 read, ok? Tony, why don't you do 7 your thing and then. 8 MARCECA: Why don't you let me swear MR. 9 you in first? 10 MR. BAILEY: Is that camera running? 11 MR. MARCECA: No. Are we recording? 12 MR. BAILEY: No. You have to 13 record that. Then you have to state 14 the time on that thing. I have 15 12:25, but I might be fast. 16 MS. GUIDO: No it's 12:15. 17 I am fast. Go by your MR. BAILEY: 18 watch then. That just runs elapsed 19 time. 20 MARCECA: Can I? I just want to do a MR. 21 radio check here. Don, is this 22 camera running? 23 BAILEY: (Sigh) Just a second. MR. 24 MARCECA: Mine's recording. I just MR. 25

want to...

ĺ MR. BAILEY: No, it's ok. Alright use 2 this one. Put that on standby. 3 It is, hold it a MR. MARCECA: 4 second. Let's put a tape in there. 5 Sometimes that helps. *MR. BAILEY: 6 That's why it wasn't reading. 7 Trooper you look handsome, you're a 8 good-looking man. Never trust a 9 lawyer who says that. Now just push 10 this right here. 11 MR. MARCECA: Gotcha. 12 MR. BAILEY: Ok. It's recording now. 13 It will do the elapsed time just 14 like your professional model does. 15 ok? 16 MR. MARCECA: The time is 12:15 and it 17 has begun to video record this 18 deposition. And good morning, ah, 19 one moment. My name is Anthony 20 Marceca, and my address is 2219 21 Dixie Drive and I'm employed by PR 22 Video and the have been contracted 23 to conduct this video deposition on 24 behalf of the plaintiff. This 25 matter is docketed at 1:cv-01-0084,

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in the United States District Court. for the Middle District of Pennsylvania. The caption is Darrell A. BAILEY: "G" · MR. 6 MARCECA: Sorry. "G" Ober versus MR. 7 Paul Evanko et al. And now we should 8 swear you in. Do you profess to 9 tell the truth, the whole truth, and 10 nothing but the truth, so help you 11 God? 12 TROOPER CARR: Yes. I do. 13 MR. MARCECA: Thank you. 14 Trooper we're going to MR. BAILEY: Ok. 15 be doing a deposition here today. 16 I'm going to be asking you question. 17 I want you to feel free at any time, 18 if you have a question that you want 19 to ask me about something I'm asking 20 you or where I'm going with the 21 questions I want you to feel free to 22 question me. Don't be afraid to ask 23 I don't mind that. 24 little unusual but I think it will 25

That's a

get us through any deposition more

quickly and it will make you feel more comfortable.

TROOPER: Yes sir.

MR.

BAILEY: I don't have the slightest interest in any trick question. don't want to mislead you and for that reason I think it's very, very important that you answer fully and completely. You do have an obligation to do that but I think it's more important that you know for your own benefit to answer fully and completely. And that means if I inadvertently, and I assure you if I do it, it will be inadvertent, if I interrupt you before you completed your thoughts or your response. you want to respond more fully, please don't hesitate to correct me and stop me. Make sure you answer to your satisfaction. Ah, from time to time that doesn't seem relevant or don't seem important. If they go beyond any kind of an extreme boundary your attorney will step in.

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ĺ ah, she will object and she will 2 look after your interest. If that 3 occurs at any time make sure you 4 follow your attorney's advice and 5 stop, so she can finish. Ah, Syndi 6 I assume the usual stipulation as to 7 objections, except as the form of 8 the question be reserved till time 9 of trial. Is that ok? 10 MS. GUIDO: Yes, we will. 11 BAILEY: Ok. Now trooper for the MR. 12 record your full name and your 13 official address. 14 My name is Thomas G. Carr. My rank A: 15 is Trooper. I'm a member of the 16 Pennsylvania State Police currently 17 assigned to the Bureau of Forensic 18 Services at 1800 Elmerton Avenue, 19 Harrisburg, PA. 20 Can you for us briefly describe your Q: 21 duties? 22 Ah, I am a latent print examiner. A: 23 compare unknown latent prints that 24 are lifted and preserved from crime 25 scenes to known fingerprints in an

ĺ attempt to identify those latent 2 prints and I also work with our states Automated Fingerprint 4 Identification System where I can 5 scan the image of that fingerprint 6 using the AFIS workstation and I 7 send an image of that print off for 8 a search against a known data base. 9 Alright. Sir, where do you perform Q: 10 these duties? 11 I perform these duties at the A: ` 12 Harrisburg Regional Crime Lab at 13 Elmerton Avenue. 14 Ok, and is that where you were Q: 15 working on or about June/July on 16 1999? 17 Α: Yes sir. 18 And, ah, Tom do you, how long have Q: 19 you been with the Pennsylvania State 20 Police? 21 A: Nearly eighteen years. 22 Are you active with the Pennsylvania Q: 23 State Troopers Association at all? 24 Yes sir. A: 25

ĺ Q: In what capacity aside from I assume 2 being a member? 3 I'm also, um, in addition to being a . A: 4 member I'm also a Lodge Official of 5 my local FOP Lodge, State Police 6 Lodge. 7 MR. BAILEY: Ok, that brings me, ok, Tom 8 from time to time I may change a 9 little bit my line of questioning. 10 when I do I'll give you a warning 11 about that so it doesn't surprise 12 you. You know sitting and being a 13 witness isn't the easiest thing in 14 the world and I understand that. So 15 now I want to ask you some 16 questions. I'm going to go back in 17 time. And I want to take you back to 18 1999 and specifically to June 1999. 19 Now is it fair to say that sometime 20 in late June, I have a date of June 21 28, 1999 that you participated in 22 some sort of a meeting in which 23 Captain Ober was questioned. 24 that correct? 25 Yes sir **A:**

ĺ Q: Now, Tom prior to June 28, 1999 did you now Darrell Ober? 3 A: I knew who Darrell Ober was. I knew 4 he was the Captain. I would greet 5 him in the hallways at department 6 headquarters. I would salute him in 7 the morning, ah, and I, ah. 8 didn't know him personally but from 9 working out of DHQ I knew him. 10 And, ah, had you ever had any Q: 11 official dealings with Mr. Ober. 12 And by that I mean did you ever play 13 any part or role in any 14 investigations in which he was 15 involved or work with him on any ad 16 hoc, ah, you know, project or 17 something? 18 Only on one occasion, um, Captain A: 19 Ober and I believe Major Merriman 20 came down stairs into the crime lab 21 regarding, it was regarding an 22 internal investigation of one of our 23 members where latent print evidence 24 was taken from an item that was 25 seized as evidence in the course of

ĺ this investigation. and there was a 2 latent fingerprint that was searched 3 through AFIS and, I didn't do the 4 report but I was there in the office 5 while the work was being done and I 6 remember that Captain Ober was in 7 the office and I can remember having 8 a friendly conversation with him 9 while we were waiting for the search 10 to come back. 11 Ok so it's fair to say that there Q: 12 was no time when you had any kind of 13 a conflict or problem nor for that 14 matter did you socialize with or 15 have any kind of a non-official 16 relationship, friendship with 17 Captain Ober. Is that fair to say? 18 A: Yes sir that's fair. 19 Do you recollect how you came to be Q: 20 summoned, contacted or called, 21 whatever it was to, just explain the 22 circumstances for us to participate 23 in the meeting June 28, 1999? 24 As I recall it was ah, it was around Α: 25 11 o'clock or 11:30 and I believe I

ĺ was in the middle of eating my 2 lunch, um, I remember taking a call 3 from Major Williams who asked if I 4 was a PSTA Rep, representative and 5 he ask me if I could come up to 6 Captain Corey's office up in the 7 Commissioner's complex and represent 8 Captain Ober during a proceeding. 9 Q: Ok. Tom, how many times, I can call 10 you Tom? 11 A: Sure. 12 I'm glad when I get called Q: 13 Don so I'll stay with that. Prior 14 to June 28, 1999 had you had many 15 occasions to participate in many 16 meetings in your role as FOP 17 representative? 18 On several occasions. PSTA. I'm A: 19 sorry. On several occasions you 20 What role do you play when 21 you perform that function? what's 22 that about? What do you do as a 23 PSTA in one of these meetings? 24 Ah, basically I sit in with the A: 25 officer of member who there has been

ĺ an allegation of, ah, like a 2 regulation a violation, something 3 like this and we sit in, or I sit 4 in. the whole purpose of me being 5 there is to: number one serve as a 6 witness and, ah, number two just to 7 make sure the members rights aren't 8 being violated. And that a now we 9 have a contract, just to make sure 10 the contract is being followed. 11 Ah, yeah, ok. Your role then is to Q: 12 Is it fair to say, be an observer. 13 not that one would expect this of 14 course, but you're there to see that 15 the rules and procedures are 16 followed? 17 A: Yes. 18 what's an administrative inquiry. Q: 19 administrative investigation? 20 Well, we have a lot of regulations. Α: 21 um, governing code of conduct and 22 also, ah, the way we conduct work. 23 And, um, we have a lot of 24 responsibilities. There's been 25

allegations, ah, you know, members

1 from time to time they, there's 2 allegations made, that they, they didn't do this right or there's 4 something they could have done that 5 they didn't do and then the 6 department takes action against 7 them. Disciplinary action usually. 8 Ok, I'm curious. That's an inquiry 9 of some sort, ok? Who conducts 10 inquiries? 11 There's an officer assigned to A: 12 conduct those. Sometimes an officer 13 is assigned from the Bureau of 14 Professional Responsibility and 15 sometimes it's an officer who is 16 assigned right from the troop where 17 that this occurred in. and, ah, this 18 officer would be, in other words, a 19 Pennsylvania State Policeman? 20 A: Yes. 21 Q: But what's an administrative, I'm 22 still confused. I'm looking for a 23 definition for this administrative

inquiry. Is there any special

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1		meaning for what an administrative
2		inquiry is?
3	A:	Well the only thing that comes to
4		mind is, ah, that there's a
5	*	regulation that the member might not
6		have followed and that the
7	,	department is checking into.
8.		Something like that.
9	Q:	Do you, like, can you cite me sort
10		of some kind of definition or
11		something in your regulations or
13		maybe in your contract that deals
13		with that?
15	A:	No, I'm sorry. I'd have to refer to
16		the contract.
17	Q:	That's ok. I don't expect you to
18		know these things off the top of
19		your head. You did a number of
20		these things in the past?
21	A:	Several, yes.
22	Q:	Several. Can I just…tell you what,
23	• •	stay on camera. I'll be back in one
24		second. Let the listeners know that
25		somebody's knocking on the door. My

ĺ help had to go home sick. So hold 2 on. 4 (Background noises) 5 6 Thank you ladies and gentlemen. MR. BAILEY: 7 I greatly appreciate that. 8 Tom, what I'm looking for, let me 9 try to ask a few different ways if I 10 can. BRP, what's BRP? 11 It's an acronym for Bureau of A: 12 Professional Responsibility. 13 like an internal investigative tool 14 that our department has. 15 Q: Is there an Internal Affairs 16 Division in the Pennsylvania State 17 Police? 18 Α: Yes, and that's what it is. 19 they refer to it as BRP. 20 And if somebody does a BPR on you. Q: 21 what that means, I have a little 22 experience with the State Police. 23 what that means is perhaps for some 24 reason there's a need to investigate 25 facts or circumstances surrounding

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1		something and they, ah, convene or
2		
3		they conduct what they call a BRP.
4	A:	Yes.
5	Q:	And that's the acronym that you
6	*	referred to. Was it a BRP with
	·	Captain Ober?
7	A:	I don't believe it was, no.
8	Q:	What was it?
9	A:	It was an inquiry.
11	Q:	An inquiry?
12	A:	It was some kind of inquiry that was
13		ordered by the commissioner I
14		believe.
15	Q:	Did you say some kind of inquiry?
16	erija.	That's what I'm looking for, Tom.
17		What kind of inquiry?
18	A:	A Commissioner's inquiry.
19	Q:	Oh, ok.
20	A:	But I'm not sure. It was some kind
21		of an inquiry but I'm not sure of
2,2		the exact terminology.
23	Q:	Ok. I now. I understand that. Why
24		did you refer to it as a
25		Commissioner's inquiry?
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1	A:	Because I was under the impression
2		that it was something that the
3		Commissioner asked to be done.
4	Q:	Let me try to lay a foundation. Let
5	\$	me go at it another way. Before
6	·	June 28, 1999 had you participated
7		in any other Commissioner's
8		Inquiries?
9	A:	No.
10	Q:	Before June 28, 1999 how many, if
11		you can give us a figure, ah, of
12		these gatherings, meetings whatever
13		you call these things had you
14		participated in as a Pennsylvania
15	,,;s	State Troopers Association
16		Representative?
17	A:	I would have to say, ah,
18		approximately five or six, something
19		like that over a five or six year
20		
21		period. I actually haven't sat in
22	0.	on very many.
23	Q:	Ok, now where did you gain the
24		impression or on what facts do you
25		base the, ah, your use of

ĺ Commissioners Inquiry. What led you 2 to use that term? 3 Cause I remember Major Williams, it A: 4 was Major Williams, Major Wertz and 5 Captain Ober who were in Lt. Corey's 6 office and I remember ah, I'm not 7 sure if it was Major Williams or 8 wertz used the word inquiry and 9 words to the effect of 'by the 10 Commissioner" something like this. 11 Ok, I'm an old army guy and the way Q: 12 the army works, at least, in my mind 13 if you can answer a few questions 14 about this, this way. In the army, 15 if there's an inquiry, ok? They 16 have a system of justice and they 17 have a thing called an Article XV, 18 uniform code, but the only person 19 that can punish someone is their 20 Commanding Officer. See a General 21 can't come in and say "Hey, I'm 22 gonna punish this guy." He has to 23 go and ask that guy's commander. 24 Can the Commissioner of the State 25

Police, if you know the answer to

ĺ this, can the Commissioner of the 2 State Police personally direct an 3 investigation into somebody 4 internally? If you know? 5 I'm not sure I know the answer to 6 that. He is the head of a large 7 department who has many people under 8 him. I'm not sure how to answer or 9 what the answer is. 10 Do you have knowledge of or Ok. Q: 11 have you ever seen any regulation of 12 the Pennsylvania State Police, which 13 gives the Commissioner the power to 14 direct that someone be investigated? 15 (sigh) I'm not sure. A: 16 Tom, ah, can the Commissioner of the Q: 17 State Police, he's riding down the 18 Turnpike. Let's say he observes a 19 police officer doing something he 20 doesn't like I'm not suggesting 21 something criminal or even a civil 22 Just something he doesn't 23 Does he have the power to like. 24 dismiss that officer from his job? 25 No, not without due course. **A**:

ĺ Not without due process of law. Q: 2 you sit her today, in fairness to 3 you then, you don't know of any rule 4 or regulation, custom or practice, 5 there may be one, but you don't know 6 of any rule, regulation, custom or 7 practice that the Commissioner of 8 the Pennsylvania State Police can 9 order someone be investigate and 10 respond to questions? 11 I don't know of any. **A:** 12 Now is it fair to say that the Q: 13 Pennsylvania State Police could set 14 in motion from a complaint a BRP or 15 something of that sort a properly, 16 I'm not saying the other way isn't 17 proper, but a procedure whereby 18 someone would be investigated and 19 questioned in a normal way. 20 Possibly. A: 21 Do you know how that's done. I'm a Q: 22 citizen out here, I assume, I've 23 represented Police Officers, but I 24 as a citizen out here I write to the 25

State Police and complain that an

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officer did something um, low would that complaint be processed? Well a supervisor would take that A: complaint, assure this person that it will be followed up on and, ah, in most cases the complaint, that we 7 have a FACE sheet it's called, a Use 8 of Force and Complaint Reception 9 Worksheet. And when that's filled 10 out it does through channels and 11 then, ah, the Troop Commander then 12 makes a decision whether it's to go 13 on to the Bureau of Professional 14 Responsibility for follow-up or he 15 can assign a member of his own troop 16 to do the investigation and that's 17 usually the was it goes. 18 Ok. Q: 19 I believe the more serious Α: 20 allegations go to a BRP 21 investigator. Where the more, the 22 more minor allegations are handled 23 within the troop. That's usually

the way it goes.

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1	Q:	When you have, this excludes Mr.
2		Ober now, when you have fulfilled
3		your role as an observer at these
4		kinds of meetings do you do any
5	\$£	paperwork? Do you make out any kind
6		of report or anything of that sort?
7	Α:	No sir. I didn't make out any
8		report regarding this. I remember
9		that it was a taped interview.
10	Q:	It was taped?
12	A:	I remember I was there to serve as
13		witness but, ah, I did not go up to
14		Lt. Colonel Corey's office with any
15		notepad or pen or anything like
16	هوي.	that. I was asked to go up there
17		and I went up.
18	Q:	Ok. Now you say it was taped. Who
19		taped it?
20	A:	I believe it was major wertz.
21	Q:	Major Wertz. Did you see Major Wertz
2,2		turn on the tape recorder?
23	A:	Yes, ah I believe it was Major Wertz
24		but the interview was conducted by
25		both Majors Wertz and Williams, the
1		two of them.

ĺ Alright and do you remember at what Q: 2 point in the procedure the tape was 3 turned on? 4 I remember that there was not much Α: 5 conversation before the tape was 6 turned on. I remember it being 7 turned on very early in the 8 interview process. I know that 9 there was some words said before the 10 tape was turned on. I don't recall 11 what those words were. I think it 12 was, they were a formality. It was 13 a conversation like that. 14 remember the tape recorder being 15 activated very early in the 16 interview. 17 Do you remember who was there Q: 18 when you got there? 19 I remember walking into Colonel Α: 20 Corey's office and I remember seeing 21 Captain Ober, and, ah, Major Wertz 22 and Major Williams. 23 Q: Anyone else? 24 Beside myself it was just the four **A**: 25 of us.

ĺ Ok, do you remember roughly what Q: 2 time of day that was? 3 As I recall it was either, I just A: 4 broke out my lunch, I was in the 5 middle of it or just finishing up so 6 it was around 11:30 or so, or ten 7 after or quarter after something 8 like that. 9 Do you remember how long that Q: 10 meeting lasted? 11 A: Oh, it went, um, I would say it was 12 over an hour. 13 Maybe an hour and twenty minutes, Q: 14 something like that? Approximately. 15 Ok, do you remember if there were 16 any interruptions during the 17 meeting, phone calls, anyone left 18 the room and came back in? 19 I remember, uh, towards the end of Α: 20 the interview I asked, if it would 21 be ok with everyone present if, ah, 22 they'd take a minute's break so that 23 I can use the men's room. 24 came back and then I remember it was 25 activated, the recorder was

ĺ activated again and shortly after 2 that the interview came to an end. 3 Q: Alright. Do you have a recollection 4 at any time during your presence 5 either Mr. Wertz or Mr. Williams 6 making any telephone calls or 7 receiving any telephone calls? 8 No, I don't recall that. A: 9 Ah, most of the meetings that you've Q: 10 attended other than the one with 11 Captain Ober were they done in the 12 Commissioner's office or the Deputy 13 Commissioner's Office? 14 A: Ah. no. 15 You seem to be reacting strongly. Q: 16 Where did you? where did you do 17 them? 18 A: I can remember representing a member 19 when I was stationed at Troop 20 Headquarters. I remember, ah, 21 sitting in an interview there. Ah, 22 in the past I sat in on interviews 23 at Troop h. but this is the first 24 time I ever sat in on an interview 25 in the Commissioner's Complex.

Ok. Where is the Commissioner's Q: 2 Complex? 3 A: The third floor of departmental 4 headquarters building. 5 And your best recollection is that Q: 6 you were contacted by Mr. Williams? 7 Yes, I believe it was Major A: 8 Williams. 9 Q: Um, do you remember what Mr. 10 Williams said to you when he called 11 you in on the telephone beyond 12 asking you if you were a PSTA 13 Representative? 14 I remember him asking me if I could A: 15 come up to Lt. Colonel Corey's 16 office, to, I'm not sure if he used 17 the words to sit in on and interview 18 or to witness an interview an 19 interview of Captain Ober. 20 remember him saying words to the 21 effect of Captain Ober is requesting 22 I believe he said PSTA 23 representation. I believe that's 24 what he said or words to that 25 effect.

ĺ Um, did Captain Ober have to attend Q: 2 this thing? Couldn't he have just 3 walked out or walked away? 4 A: I don't know. 5 I'm not trying to be funny. Like if Q: 6 it would really be wise to do such a 7 I'm asking if, you know, in thing. 8 a context of what his rights were. 9 And I'm asking that because I'm 10 still trying to understand, I'm 11 being very honest with you. Let you 12 know where I'm coming from. 13 trying to understand what the nature 14 of this proceeding was. You know 15 what it was for. What I do 16 understand it was a Commissioner's 17 Inquiry but, uh, you know, I'm 18 trying to figure out... 19 20 PAUSE WHILE DOOR IS ANSWERED 21 22 TROOPER: Could you repeat the question 23 please? 24 Sure. Do you remember whether Q: 25 Captain Ober had to be there?

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Α:

he have to attend this thing? you know if he had any choice? When I appeared at Colonel Corey's office they were all in there. I'm not sure what transpired before I got there. Um, I don't know what they told him I, uh, I didn't get the impression he was being held there against his will. Um, they were there to conduct an interview and they conducted it. And he had, Captain Ober asked for someone t witness it and I went up there to do Before I got there I don't that. know what transpired.

Q: You have a, uh, recollection of…let me return to a question I asked earlier about the Commissioner's, ah about the Commissioner's inquiry.

Did Major ah, did Mr. Williams or Mr. Wertz indicate why the Commissioner wanted this inquiry done?

A: From their line of questioning

Captain Ober I was able to surmise

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there was an investigation that Captain Ober was involved in. they were asking him detail questions about this investigation and I recall that they asked him detailed pointed questions as to why, ah, the chain of command wasn't followed and why the commissioner wasn't informed? Questions I can't, I can't recall verbatim of how these questions were worded but I can, I got the impression that these were It was an investigation the kind. the Commissioner was ah, he wasn't informed of this investigation or that the chain of command wasn't followed and that's why this inquiry was taking place. This was my impression.

Q: Do you remember if any regulations were cited?

A: I can't. I don't know I can't recall.

ĺ Um, your best recollection is that Q: 2 the Commissioner, why the 3 Commissioner was not informed? 4 A: Um-hmm. 5 Did you learn from your attendance . ∙Q: 6 in this meeting what, ah, the 7 commissioner was not informed about? 8 It was an investigation that dealt, A: 9 I believe the FBI was involved in 10 this investigation. Ah, there were 11 allegations that there was 12 corruption, I remember that. 13 remember Captain Ober being asked 14 why he didn't follow the chain of 15 command in notifying his superiors 16 as to what he learned, he learned 17 after he was contacted by the FBI. 18 Do you have recollection of how Mr. Q: 19 Ober responded? 20 See, I can't remember exactly, um A: 21 just that his Major wasn't there. Ι 22 remember that and I believe he 23 reported to Lt. Colonel Hykus but 24 I'm not sure about that. I remember 25

him answering that there was

1	ì	
1		conflict. He wasn't sure who to
2		contact. That his Major wasn't
3		present in Harrisburg. His Major
4		was out of town and that the next
5	** **	person was Lt. Colonel Hykus. I
6	· .	believe that's how he answered.
7	Q:	And, um, do you, do you have a
8		recollection of when, when the
9		Commissioner found out? Or how the
10		commissioner found out, if indeed he
11	÷ .	did about this investigation?
12	A:	No, no I don't.
13	Q:	Ok. Did you sit in on any other
14	· · · · · · · · · · · · · · · · · · ·	meetings connected to this inquiry?
15	A:	No sir. This was the only one.
16	Q:	Ok did, ah, did Mr. Wertz or Mr.
17	·	Williams ever comment as to what
18		regulation Captain Ober had broken
19		or may have broke?
20	A:	I remember them referring to Chain
21		of Command, Chain of Command and
22		making the implication that the
23		Chain of Command wasn't followed. I
24		remember that I know there's a
25		regulation for it. I just can't

ĺ remember to spout it from the top of 2 I know we have one. my head. 3 They were asking him remember that. 4 questions about the Chain of 5 Command. 6 Now did they say, did they Q: Ok. 7 indicate why the Commissioner wanted 8 to do this? Why he had a personal 9 interest, if indeed he did in this 10 investigation? 11 It was my impression after listening **A:** 12 to these two men ask questions that, 13 ah, I got the impression, my own 14 feeling is that the commissioner was 15 left out and ah, he was not happy 16 about it. That was my impression. 17 Do you have a recollection of there Q: 18 being any discussion about what this 19 FBI investigation was supposed to be 20 into aside from public corruption. 21 Let me be more specific. Was there 22 any discussion of this probe being 23 into people in high places as 24 opposed to a run of the mill 25

1 complaint about a Trooper or 2 something like that? 3 I remember it had to do with hiring A: practices in the Pennsylvania State 5 Police. Um, I remember Captain Ober saying that he was informed ah, he was told it dealt with some maybe 8 high level officers in the State 9 Police. He wasn't sure whom and, 10 ah, that's the gist of what I 11 remember. 12 Do you remember what Captain Ober's Q: 13 position was with the State Police 14 at that time Tom? 15 I believe Captain Ober was at thiis Α: 16 time in the Bureau of Tech Services. 17 I believe and it's either Tech 18 Services or ah. I believe it was 19 Tech Services. Just prior to that 20 he was in the Bureau of Professional 21 Responsibility as a supervisor, as a 22 commander. 23 You ever hear anything more about Q: 24 this inquiry after June 28, 1999? 25

ĺ And that would include scuttlebutt 2 and rumors. well, I recall it wasn't too long A: 4 after this interview, I'm not sure 5 exactly how long after but I 6 remember that it came, it was published in the Harrisburg Patriot 8 and prior to that I was told by 9 order of the Commissioner not to 10 discuss any of this and I didn't I 11 didn't even tell anyone from my 12. lodge. 13 Ok how was the order of the Q: 14 Commissioner not to, how was this 15 order of confidentiality 16 communicated to you? 17 By Majors Williams and Wertz. Α: 18 When? Q: 19 About an hour after the interview 20 concluded I was back in my office 21 working and, ah, the Majors walked 22 into the office and they said 23 Trooper Carr, just so that you're 24 aware by order of the Commissioner 25 you're not to talk about or discuss, Ĩ Did you ever learn that there had Q: ever been charges brought against a 3 Pennsylvania Police member regarding 4 this matter or related matters? 5 · A: You mean State Police Members? 6 Q: Yes sir. 7 **A:** No. 8 Did you learn what the underlying Q: 9 FBI probe was about? 10 It was I believe it was a concerned A: 11 the western part of our state. 12 There was an investigation into the 13 hiring practices in our department. 14 And as I recall, um, I might be 15 wrong about this but somebody was 16 arrested but it wasn't a 17 Pennsylvania State Police Officer or 18 anybody connected with our 19 department. It was a, it was a 20 civilian I believe. 21 Ok did the FBI ever talk to you Q: 22 about any matter concerning this? 23 No sir. **A:** 24 Aside from the June 28, 1999 meeting Q: 25 did you have any discussions with

24

25

any, discussions with anyone else concerning this matter? Let me explain what I mean by that. I' know that you didn't breach the confidentiality. I'm not trying to trip you up on that. I understand that you did not breach confidentiality. My question has to do with whether you received any other inquiries, or any other inquiries, or any other contacts from anyone in your Chain of Command or any Superior Officer of the Pennsylvania State Police about the matter?

A: No.

Q: You never heard about it again?

A: I heard about it after it was published in the paper and at that time a fellow lodge member asked me, after it became public knowledge, had I sat in on this interview and I told him I did. But that was the extent of that.

ĺ What were the feelings of the person Q: 2 that asked you about that? What did 3 they feel about this thing? Did 4 they express an opinion or feelings 5 about it? 6 Um, no not particularly, no. A: 7 Ok. Ah, after the June 28, 1999 Q: 8 interview was done of Captain Ober 9 did you ever talk to Mr. Williams or 10 Mr. Wertz again? 11 Α: No sir. 12 And, ah, you were never asked for Q: 13 any kind of reports or information? 14 A: No sir. 15 During the meeting itself was the Q: 16 governor's office ever mentioned? 17 I don't believe so. I don't Α: 18 remember, I don't remember that 19 being said. 20 Ok. Ah, I think now would be a good Q: 21 I'm just gonna reverse this time. 22 It will take a few seconds. tape. 23 24

END OF SIDE ONE - TAPE ONE

25

1		
2	MR.	BAILEY: Ok, now, ah, do you have any
3		recollection of Mr. Wertz or Mr.
4		Williams telling you Mr. Evanko was
5	a Sh	going to review the findings of this
6	enter de la company de la comp	inquiry?
7		mquiry:
8	A:	Yes, I believe that was said. Not
9		to me bur I recall, I remember words
10		to that effect being conveyed to
		Captain Ober.
11	Q:	Now, ah, was Mr. Corey discussed
12		during that meeting at all?
13	A:	He may have been. I can't recall,
14		
15		ah, it's possible. I just can't
16	,,;;32	recall.
17	Q:	Did you ask any question during the
18		interview?
19	A:	No sir. I don't believe I did.
20	Q:	Um, you said this interview lasted
21		maybe over an hour.
22	A:	Yeah.
23	Q:	And that it was taped.
24	A:	Yeah.
	-7.1	i Culti
25		

1	Q:	Ok. Now was there a review done on
2		the meeting or did you leave when it
3	manda e e e e e e e e e e e e e e e e e e e	was over?
4	A:	I left when it was over.
5	Q:	Was Captain Ober still in there when
6		you left or did he leave when you
7		left or before you left.
8	Q:	I believe we both walked out of the
9		room at the same time and then I
10		
11		believe I walked out of the
12		Commissioner Complex by myself and I
13		went downstairs to my office.
14	A:	Uh, let's suspend there for just one
15		second. Let me talk to Captain Ober
16		out here.
17	MR.	MARCECA: You want me to stay on camera
18		sir?
	MR.	BAILEY: Yes, just let it run it'll be
19		only two seconds.
20	-	only two seconds.
21		
22		(DOOR CLOSING)
23		
24	MR.	BAILEY: Ok, do you have recollection of
25		Mr. Wertz or Mr. Williams telling

		•
1		you that Mr. Evanko was going to
. 2		review the findings of this inquiry?
3	A:	Yes I believe that was said. Not to
4		me but I recall, I remember words to
5	*	that effect being conveyed to
6	1	Captain Ober.
7	Q:	Now, ah, was Mr. Corey discussed
8		during that meeting at all?
9	A:	He may have been. I can't recall,
10		ah, it's possible. I just can't
11		recall.
12	Q:	Did you ask any questions at the
13	*	interview?
14	A:	No sir. I don't believe I did.
15 16	Q:	And you say this interview lasted
17		maybe over an hour?
18	Α:	Yeah.
19	Q:	And that it was taped.
20	A:	Yeah.
21	Q:	Ok. Now was there any review done
22		on the meeting or did you leave when
23		it was over?
24	A:	I left when it was over.
25		
- 1		

1	Q: Was Captain Ober still in there when
2	you left or did he leave when you
3	left or before you left?
4	A: I believe, we both walked out of the
5	room at the same time and then I
6	believe I walked out of the
7	Commissioner's Complex by myself and
8	I went downstairs to my office.
9	MR. BAILEY: Uh, let's suspend there for just
10	one second. Let me talk to Captain
11	Ober. Let me talk to Captain Ober
12	out here.
13	MR. MARCECA: You want me to stay on camera
14	sir?
15 16	MR. BAILEY: Just let it run, it'll be only two seconds.
17	(Door closing)
18 19	Mr. BAILEY: One last question, I didn't think
20	this would take very long as I told
21	you.
22	
23	(Lawyers exchange as to time of next witness)
24	MD DATE EVENT
25	MR. BAILEY: Tom, I just have on other
	question. I want to show you

1	something and ask if you've ever
2	seen this and then to have you
3	describe it for us.
4	(pages turning)
5	A: Sure.
6	Q: Before you comment could you please
7	give it to Ms. Guido?
8	A: Sure.
9	MR. BAILEY: Let her look at it first before
10	you say anything. I'll make you a
11	copy. It's a simple form.
12	MS. GUIDO: I've got a copy.
13	Q: Tom, I'd like you first to describe
14	what you're looking at, there are
15	two pages right?
16	A: Yes.
17	Q: Ok, and describe for us please.
18	A: The first one is ah, an
19	administrative warning form SP 1-
20	104. An administrative warning and
21	the member employee Captain Darrell
22	G. Ober. Interviewers are listed as
23	Major Thomas F. Williams and Major
24	Robert G. Wertz. It's dated June 28,
25	1999. Looks like the form was made
	======================================

İ out on the 22nd and then it was 2 signed on June 28th. That's the way 3 it looks. The other one is a 4 Notification of Inquiry. The 5 subject of inquiry is indicated as 6 Captain Darrell G. Ober of the 7 Bureau of Professional 8 Responsibility. Do you want me to 9 read it? 10 MR. BAILEY: Please. 11 "By order of the State Police A: 12 Commissioner Paul J. Evanko, I have 13 been assigned to make inquiry into 14 you knowledge of the facts or 15 circumstances surrounding the 16 political corruption investigation 17 that was conducted by the FBI in 18 western Pennsylvania." 19 Signed Major Thomas F. Williams, 20 signature of investigator. Signed 21 by Captain Ober and signed by 22 myself. 23 Q: The document you just read from by 24 the was I'm going to have marked as 25

Carr2, the document referred to

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previously Tom for the record is going to be marked Carr1 and the will be exhibits to you deposition. Can I have Carr1 for just a moment? Ok. I'm not going to mark these originals, by the way, I'll copy them and I will mark the copies. Syndi's already seen it.

Ah, in the first paragraph here it indicates I believe, you just looked at it, correct me if I'm wrong, that these concerns are administrative matters. As you properly testified, it was not about a criminal prosecution and they're quite forward about that saying that they're not interested in any kind of criminal conduct and it's a, it provides sort of a Fifth Amendment protection here you know, which I don't think that's relevant. think you pretty much know that. says here since this is an administrative matter within the Pennsylvania State Police you are

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required to answer questions truthfully and completely or you may be subjected to administrative You do have the right to action. have a union representative with you during said questioning. I had asked you a question of the voluntariness of Mr. Ober being at this gathering, whether he had a right to walk out or walk away. Upon reviewing Carr1 and thinking back to signing this form do you still think he was free to just walk out or walk away from this or is it your impression had a responsibility, was under orders to answer questions? It was my impression that there was

Α:

Q:

It was my impression that there was a responsibility there that they were asking him these questions and he had a responsibility to respond to them.

23

Ok. Um and then there's a sentence here about a union representative, you have the right to a union

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ĺ representative during questioning 2 which would be the Troopers 3 Association and that's where you, 4 that's why you came into this. 5 right? A: Yes. 7 BAILEY: I don't have any further MR. 8 questions and I'll put that back 9 there. I'll make copies of that 10 when we're done. Ms. Guido may have 11 some questions. 12 MS. GUIDO: No, I don't. 13 MR. I'd like to thank you. BAILEY: Ok. 14 Trooper Carr do you have any 15 questions of me? 16 No sir. Α: 17 BAILEY: Ok. I'd like to thank you very MR. 18 much for coming here today. If you 19 have any desire, counsel has any 20 desire, I don't know. we'll be 21 making a transcript. I don't know 22 if you want a copy of the transcript 23 or the video. The video is here. 24 Under the court rules you have a 25 right to come here and view it. You

A:

might want to extend that invitation. Feel free to do that at any time. If you want a copy of the transcript, this is not a stenographic transcript but it would have to be purchased. Or if Ms. Guido wants a copy, PR Video will provide one to her at whatever the same cost it is to us. Ok? Ok.

MR. BAILEY: Thank you sir very much. Wait, you have to, sit down just one second. He has to end the deposition and announce time.

MR. MARCECA: The conclusion of this video is 13:08 on 10/12/2001.



IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER

CIVIL ACTION LAW

Plaintiff

1:CV-00-0084

VS.

PAUL EVANKO, MARK CAMPBELL, THOMAS COURY JOSEPH WESTCOTT, HAWTHORNE CONLEY JOANNA REYNOLDS and SYNDI GUIDO, et al.

(JUDGE CALDWELL)

(JURY TRIAL DEMANDED)

DATE:

January 7, 2002

PROCEEDING:

Video Deposition Robert G. Werts

APPEARANCES.

For the Plaintiff

Don Bailey, Esq. 4311 N. 6th Street Harrisburg, Pa 17110

For the Defendants

Joanna Reynolds Esq. 333 Market Street Harrisburg, Pa 17101

Joanna could we go and just go on down the line here.

My name is Joanna Reynolds and I represent 2 the defendants in this matter.

> Paul Evanko, Commissioner of the A:

Pennsylvania State Police.

MR. BAILEY: Commissioner

Joe Westcott. A:

MR. BAILEY: That's Colonel, Lieutenant Colonel?

A: Yes.

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MR. BAILEY: Ladies and gentlemen again I want to caution everyone, this is a video deposition. This is to let you

know, Mr. Werts, you can come here anytime if you want to 12 view the video. Your attorney has already indicated the desire

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to acquire a copy, which she will do through PR Video. The 14

rules dictate that we all pay the same price for that and it's 15

very reasonable but by the same token you do have a right to

come here and you can view the video when you please, when 17

18 you want to. We'll make it available to you under court rules.

Now what we're going to be doing is a deposition here today. I 19

20 want you to be relaxed. I'm not interested in any smoking gun

questions; you know that trick stuff you see on TV. Although 21

you are an experienced police officer it's a different story 22

sometimes when you are a witness. I want to try to put you at 23

ease. One of the things that I do differently than most 24

attorneys do, I have no objection at any time for you or your

MS. LYDE: Good Ms. Reynolds and gentlemen.

Please be advised the video and audio is in operation. My

name is Crystal M. Lyde, L-y-d-e. My address is 4310 Hillsdale

Road, Harrisburg, PA, 17112. I've been contracted out by PR

Video to be the operator for this deposition. The case is in the

United States District Court for the Middle District of

Pennsylvania. The caption is Darrell Ober vs. Paul Evanko et

al. Al. the docket number is 1:CV-01- 0084. The date is

January 7, 2002. The time now is 11 o'clock AM. The

deposition is being held at the law offices of Don Bailey, 4311 10

North 6th Street, Harrisburg, Pennsylvania, 17110. The video 11

deposition is being taken on behalf of plaintiff Darrel Ober. 12

The witness' name is Robert G. Werts. Will you raise your right 13

hand please? Please state your name for the record and spell 14

it, please. 15

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MR. WERTS: Robert G. Werts, W-e-r-t-s.

MS. LYDE: Do you so swear to tell the whole truth,

and nothing but the truth so help you God? 18

A: I do.

MS. LYDE: Thank you. Mr. Bailey I need a sound

check around the room. 21

MR. BAILEY: Yes, my name is Don Bailey, I'm an

attorney. I represent the plaintiff, Darrel G. Ober, in this 23

matter. The witness, the deponent has already had an 24

opportunity to check and he does ok on the audiometer.

attorney or for that matter any of the other defendants that

may want to through the attorney, ask me where I'm going

with a question, what I mean by a question. I don't mind that.

I'll give you what's called an offer or an explanation, that sort

of thing. So don't feel bashful about that. Again we want a

good factual record. As you know your duty under your oath is

to answer as fully and completely as you can. That means that

from time to time you may have a response to a question that

you want to quantify it or you want to put limits on your

degree of certainty, is what I call it, and say well I'm almost 10

certain or 90% or whatever. Feel free to do that so that we 11

know the degree of knowledge and understanding that you 12

have about a particular fact question. By the same token you 13

don't speculate or guess wildly. If you're just guessing off the

14

top of your head, make sure you make, you understand that 15

you explain that to us because that's really not a response

that should be taken as indicative of your knowledge of fact or 17

circumstances or that kind of thing. If during the course of the 18

deposition you have any need for any kind of a break, you

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need to talk to your attorney or anything like that, I want you 20

to feel free to do that. Ok? If you want a break, you want to 21

talk to your attorney, you need a moment to refresh or 22

something like that, don't avoid doing that. The other thing is, 23

providing there's not a question on the table; if you want a 24

break to talk to your attorney just ask. I don't object to that.

There's no problem with that. Ok? The only thing is and usually with police officers I don't have this problem because you're all very professional. When you're responding to a question don't gesticulate, make sure that you respond verbally, etc. Now with that being said do you have any questions of me?

A: No.

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MR. BAILEY: Joanna, general stipulations, objections reserved to time of trial except as to form of question. Is that acceptable?

MS. REYNOLDS: That is acceptable. I would like him to read and sign the written form of the video when it comes in.

13 MR. BAILEY: Ok I'm glad you brought that up. In a 14 video deposition, there is, it's an odd thing. These rules are 15 rather different. There really is not a read and sign issue. She 16 is a notary but regardless of what any of us say at this 17 meeting that video governs because the camera doesn't lie. It shows a complete continuous record. I have, let me say this 19 for the record, I have no object to any kind of errata sheet that 20 you want to file with or add to the transcription. But you have 21 the video and, you know, the video unlike the stenographic 22 record, the video is the video, it more or less governs. So I have 23 no objections if you want to place some kind of errata with it. 24 Yeah sure. But there is no pre-approval the way you do with

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I was traveling from Pennsylvania to I believe Phoenix for a conference. Phoenix, Pennsylvania down in Montgomery? 0:No that's Phoenixville. Phoenix, Arizona. Ok. O: At Pittsburgh, I met Colonel Westcott who A: asked, once I got into the hotel and checked in to give him a call. And he had something to discuss with me. When I got into Phoenix, I got to the hotel. I checked in. I called him and I 9 met him in the lobby. At that point Major Tom Williams was 10 also there and it was at that point that Colonel Westcott 11 advised me as to the inquiry that they wanted done. 12 Why were you going to Phoenix, Arizona? O: 13 Conference. A: 14 And the nature of which was? 15 I believe it was a CARE conference but I'm not 16 A٠ sure. 17 What is a CARE conference? 18 O: It has to do patrols and how we augment our 19 A: patrol function, dealing with accidents basically. 20 All right sir. Major Williams was also at the 21 conference? 22 A: Yes. 23

Colonel Westcott was not at that conference.

You were to contact him be telephone? Or was he at the

the stenographic thing where there are the rules that provide for an errata sheet being checked. This makes no difference because it's right there, it's recorded. It's an actual recording so it's a little different; the rules are a little different. All right if everybody, if we're ready to go let's get at it. Are you ready to go? A: Do you have any idea, Major, any feelings as to O: how I should address you? Major? Major is fine. 10 Major, the primary focus of the deposition here 11 today is going to be on the investigation that you did, ok? And 12 I assume that you are pretty much familiar with that or at least have a general familiarity with the complaint. Is that correct? 15 A: I have a general knowledge of what the 16 complaint has to say. 17 Sir, have you ever read the complaint? 18 19 A: Well, let me approach it a little differently then. 20 When did you first learn or when did you first become aware 21 that the FBI had done an investigation into the Pennsylvania 22 State Police, or a member of the Pennsylvania State Police, 23 rather, let me correct that, where Mr. Ober was involved?

conference?

A: He was there.

Q: He was there?

When did you first learn of that?

A: I met him in the lobby of the hotel.

Q: All right well bear with me. Remember I don't have your knowledge of things so don't be upset with me. I'm not trying to trick you. I'm trying to piece things together. In other words you and Major, would it have been Major

9 Williams?

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A: Correct.

Q: And Colonel Westcott had traveled to Phoenix for a CARE Conference.

A: Correct.

Q: And you had traveled independently?

A: Correct.

Q: And you met

17 A: At least until I got to Pittsburgh. Colonel

18 Westcott and I were on the same plane but not seated

19 anywhere near one another.

Q: All right well let's go to Pittsburgh. Did you
 meet before you got on the airplane?

A: Yes.

Q: And how much time was there between when you got on the airplane and when you met Colonel Westcott out there in Pittsburgh? How much time did you have on the ground before you boarded the plane and sat in different spots.

> A few minutes. A:

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Now having traveled to the west coast numerous times I'm aware that that's a lengthy flight. Was it a 'red-eye' or what time of day was it? Do you remember?

It was in the middle of the day I believe.

Great, you're a lucky man. Now did you make any changes? In other words did your flight? You probably stopped for fuel somewhere, Kansas or someplace like that? Maybe not or was it a direct flight?

It was a direct flight. A:

And how full was it? O:

I have no idea. A:

14 Well during that flight did you and the Colonel 15 move seats? I've had these experiences myself so bear with me 16 and sit down and talk? 17

A:

Never talked during that entire flight? Q:

A: 20

Now Major Williams was on a different flight? Q:

I have no idea. A:

> Well he wasn't on your flight was he? O:

Not to my knowledge. A:

You got to Phoenix, get to the airport. And

maybe to rest a little bit. And tell me what was said during that conversation. 2

As best I can remember it Colonel Westcott informed me that some information had become available 4 through a meeting with Captain Ober, Colonel Hickes, and I 5

believe Colonel Evanko regarding an investigation that had taken place in western Pennsylvania with respect to a trooper 7

who allegedly was selling positions within the organizations to 8

applicants to be moved on the list to be selected for a cadet

vacancy. And that the FBI had been involved in this 10

investigation or had made some inquiries in the investigation. 11

That the bureau had contacted Captain Ober, that Ober had

12 informed Colonel Hickes of this inquiry, of this federal 13

14 investigation.

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O: In sum Colonel Westcott says that the FBI had done some kind of investigation of influence peddling of some sort, some allegation of influence peddling and that the FBI contacted Mr. Ober. And was Ober a captain at that time?

A: I don't know.

And that Mr. Ober had told Mr. Hickes?

That is correct. A:

And that the Colonel, being Colonel Evanko,

had been made aware of that and then, is that the sum of 23 what he told you? 24

That Colonel Evanko had been made aware of

what time of the year was this?

I'm not sure. A:

You don't know what time of year it was?

I'm not sure. A:

Q: All right, when you got off the airplane did you get together again? Did you talk again? Or did you meet or whatever? Did you come together, you and the Colonel?

The next meeting was in the lobby of the hotel,

after I checked in.

Did you travel from the airport to the hotel 10 Q: together? 11

12 I do not believe that we did. If we did I do not

remember it. 13

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All right so you got to the hotel and you had Q: 14 been given a message beforehand that he wanted to talk to you. Right? 16

Colonel Westcott told me that. 17

Yeah, I'm sorry. Colonel Westcott wanted to 18 talk to you. And had he given you any indication what he 19 wanted to talk to you about? 20

> Α: Nο

And let's get to this first meeting in the lobby 22 O: of the hotel. Had Major Williams arrived by that time? 23

> A: The three of us were in the lobby of the hotel.

And so you sat down, at a table somewhere,

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that at some point after, exactly when I didn't know. And yes that's about it.

Well can we focus on that word 'after that you just mentioned there, that just came out of you?

A:

to go back to that meeting and I want you to go into your mind, into your thought process at that time. Ok? Colonel Westcott tells you this. Did it occur to you, was there a question in your mind of "So what, what did Ober do or what 10

Q: I want you to try to do something. I want you

11 is this about?" I mean did you ask any questions about that? 12 I think the crux of the issue was the Colonel Evanko had not been notified of this federal investigation or 13 14 this inquiry by the federal authorities into the department,

How did you know that?

within a reasonable time frame. 15

That's pretty much what was conveyed to me.

18 Ok so Colonel Westcott also told you that there 19 was an issue of Captain Ober telling Colonel Hickes and not telling Commissioner Evanko in a timely fashion. Is that what 20 21 you're telling us?

A:

Well let's talk about that? Now let's explore 23 24 that, just for a little bit.

Go back in your mind's eye to that conference,

to that meeting. And you say that Mr. Williams was there also? A: I believe so, yes. Q: Now Mr. Williams is the gentleman that also did the investigation with you. Right?

Q: Did he display any prior knowledge of what this was about?

A: It's my recollection that at that point Major Williams had already spoken to the FBI agent that was conducting this investigation when we got to Phoenix.

O: Ok. Sir, do you remember that agent's name?

Cush, something like that.

A: That's correct.

Q: I can represent to you that I believe that is, or it may well be his name. Were there any other FBI agents 14 15 mentioned that you can recollect?

> No. A:

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Q: During the course of your involvement in this matter, you know, the review, analysis, investigation whatever you want to call with Captain Ober, were any other FBI agents or personnel mentioned at all?

If they were A:

Think carefully on that. 22 O:

If they were I do not recollect that at all.

During the course of your involvement in this matter, when I say in this matter it's the subject of this

easier for you. All right at that meeting did Colonel Westcott indicate that the Commissioner was unhappy with Mr. Ober telling Mr. Hickes? 3

I don't specifically recall him saying that the A: Commissioner was unhappy. His directions to us were to look into the facts and report them back.

Q: Did he ask you to find out why Mr. Ober had talked to Mr. Hickes as opposed to Colonel Evanko at that point?

My instructions, as I remember them from Colonel Westcott was to gather the facts regarding what had occurred, when they had occurred, reduce it to writing and submit that information to Colonel Evanko.

Q: Did Colonel Westcott say anything about Mr. Ober and by that I mean, you know, here you have some very highly placed officers in the Pennsylvania State Police admittedly the one of the finest police forces if not the best State Police force in the country. You all have a lot of experience, very professional officers. Was there any discussion as to what Mr. Ober should have done professionally or why he proceeded as he did?

> A: No. Not from Colonel Westcott.

Was there from anybody at anytime? There was no discussion if you will. The only

discussion that I would have had was with Major

deposition here. If you have any questions about that or your

attorney does please feel free to question me on it. During you

involvement in this matter did you talk to anybody with the

FBI or anybody with any federal agency?

A: No.

Was Louie Freed ever mentioned? O:

A: Not to me.

Was he ever mentioned by title? You know who

he is of course, I think we all do.

Yes. A:

Was he ever mentioned by title or position?

12 A: Not that I recollect.

13 So it's fair to say that the only FBI person or 0: 14 Federal agent or person of any type connected with any of this that you can recollect being mentioned would have been 15

16 Special Agent Cush. Right?

That's me recollection. That's the only one that

18 I remember.

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19 Thank you sir. Now let's go back again to this meeting in the lobby of this hotel. Now did Mr. Williams 20

21 indicate anything that he may have learned from Mr. Cush at

22 that point?

23 I don't believe it was at that point, no.

We'll get to that then. Let's stick to the meeting . 24 so we don't take you out of the chronology here, make it a little

Williams.

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I'm going to get to the discussions with Mr. Williams later, ok. But I don't want to that right now because my understanding is we are still at this meeting. Did, at any point did either you or Mr. Williams ask Colonel Westcott, I understand what the focus is. Did you even question like what this was about? What were you doing?

I think the directions were clear that we were to look into this matter and gather the facts.

Q: Well the facts you were supposed to gather though begs a major question I assume and that is 'why did Mr. Ober do what Mr. Ober did? Right? I mean there are two questions if I understand it. When you are gathering the facts here and I've done investigations too. In gathering facts, I mean, you have to have a reason to go. There's a presumption that underlies any investigation, not that you reach a conclusion about it. But did it occur to you what the issue was here? In other words was Colonel Westcott asking you to find out why Mr. Ober went to Mr. Hickes as opposed to Mr. Evanko?

Well I think the, as I remember, the instructions were to find out exactly what occurred. To me that would have answered the question why.

Ok, all right. Now the background information

given to you by Colonel Westcott was that Colonel, excuse me, was that Captain Ober had gone to Colonel Hickes and not had gone to Colonel, and had not gone to Colonel Evanko initially. Is that correct?

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- A: The information that was given to me was that Captain Ober had gained information during the course of an inquiry that he made or whatever it was. He was contacted by the FBI, that he took that information to Colonel Hickes and there was some period of time that elapsed before either Colonel Hickes or Captain Ober discussed this with Colonel Evanko.
- Q: And Colonel Westcott, and in fairness to Colonel Westcott who I'll be deposing later today, he made you aware of all that? I mean those are the things he made you aware of.
- A: Those were in the conversation in the lobby of the hotel.
- Q: Did he have any documents with him, he being Colonel Westcott?
 - A: If he did I don't remember them.
- Q: How long did that get together last there in the lobby?
- A: Fifteen, twenty minutes maybe. Half-hour at the very most I'd say.
 - Q: Ok. Now what did you do after that meeting

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as particulars go I don't remember anything beyond the fact that he had spoken with him. And he has spoken with him as I remember by phone.

- Q: Major, did Major Williams say when he had spoken to Agent Cush in relation to when you had this meeting. In other words how much time had passed?
- A: He mentioned when he had spoken to him but I don't know what the time span was between that and when we were meeting.
- Q: But your best recollection is that he had indicated that he had spoken to him by telephone?
 - A: Yes.
- Q: Did there come a time when he ever, that he sat down with Mr. Cush? Or you sat down with Mr. Cush?
 - A: I never did.
 - Q: Do you know if Mr. Williams did?
 - A: I do not know that.
- Q: And you've already indicated that that's the only FBI person, in the federal law enforcement official that you have a recollection of being talked to about this? Right?
 - A: That I have a recollection of, yes.
 - Q: Major Williams had no documents?
 - A: I do not recall him having any documents. He

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- A: Sat down with, at some point thereafter I sat down with Major Williams and we discussed the direction we would take in the investigation.
- Q: Now you sat down with Major Williams and discussed the direction. We're going to get to that. Now that took place in Phoenix?
- A: There was an initial meeting between the two of us in Phoenix as I remember.
- Q: In lounge? Hotel room?
 - A: I don't remember where we met at.
 - Q: But it was just you and he?
- A: That's correct.
 - Q: All right. What did Major Williams say at that meeting?
- A: At that point he explained that he had already spoken to the Special Agent from the Federal Bureau of Investigation. He informed me as to what the particulars were that Agent Cush had given to him. That is pretty much what he told me at that point.
- Q: What did he relate that Mr. Cush had said or anything?
- A: Basically that he had contacted Captain Ober and that, or that there was contact between Captain Ober and Special Agent Cush and that the, I mean as far

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may have had notes regarding the conversation with Cush but I don't specifically recall those.

- Q: Did you ever develop an appreciation or develop any knowledge of when the, this meeting in Phoenix, you don't remember when this meeting in Phoenix was?
- A: No sir I don't. I went back through a calendar to try to find out when we went out there but I can't find it.
- Q: Now in that regard, aside from meeting with Joanna or Syndi Guido have you discussed this deposition or coming here with anyone in the Pennsylvania State Police?
 - A: No sir.
- Q: You haven't gone over it with Colonel Evanko or Colonel Westcott
 - A: No sir I have not.
 - Q: Or anyone else? Is that right?
- A: That's correct.
 - Q: Why did you consult a calendar about when that meeting in Phoenix was?
 - A: Well I knew I was coming here for a deposition.
 - Q: And you figured you'd be asked that question?
 - A: And you would want to know when I found out about it?

Q: About how much time did you Colonel, I'm 2 sorry sir, I keep bouncing around with the ranks, how much time did you and Major Williams spend on that meeting out there in Phoenix? A: I'd say we probably put in a half hour, fortyfive minutes discussing what he had already found out and what we were going to do. Q: That's my next question. What had he already found out and how had he been working on the matter, if working on the matter is a proper description? I'm not saying it is. A: I don't know how much time he had spent on

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- the issue. It was my understanding that he did make the inquiry by telephone. I'm sorry. What was the second part of the question? Q: Yeah, what information did he develop? I mean he calls Mr. Cush. Had he spoken to the Commissioner? I mean what other inquiries had made.
- To the best of my knowledge the only one that he had spoken to with regard to the investigation at that point was Cush. And Cush had informed him as to times and what the substance of the conversation was between Cush and Captain Ober.
- Q: Times and substance. Well did he say who authorized him to call Mr. Cush? I mean he certainly

conversation other than what I've already explained to you, that Cush had made contact with Captain Ober or there was contact between them and that there was information given to Captain Ober.

- Q: And that then that Major Williams had called Mr. Cush prior to the meeting in Phoenix?
- A: As best I can remember Major Williams had spoken to Cush prior to that meeting. That is my recollection of it.
 - Q: And at the behest of Colonel Westcott?
 - A: That's correct.
- Please don't, forgive me; please don't take this question the wrong way. I have some military experience; it's in the army. I have never had the privilege of serving in the Pennsylvania State Police, but it is frequently referred to as a paramilitary organization. Is that correct?
 - That's correct.
- Q: Is it out of place to ask a colleague why you're doing something or why we're doing something? Why are we doing this or why does Colonel Westcott have an interest? Or why does Colonel Evanko have an interest? Or is that a no-no, don't you do that? I don't mean that to be an argumentative question but I'm just wondering if at some point out there in Phoenix you say, you know you sort of think out loud and talk with your colleague

wouldn't have called Mr. Cush without the Colonel's approval cause that's the whole reason why we're checking into Mr. Ober. Right?

- It was my understanding that he had received that information from Colonel Evanko but, excuse me, Colonel Westcott.
- O: Colonel Westcott. Let's make sure the record is clear. I'll give you a chance to make that clear.
 - Colonel Westcott.
- What you're telling us is, that Mr. Williams you're best recollection is that Mr. Williams indicated, for want of a better word, that authorization, and I'm not saying that's the perfect word, the impetus or the initiative that caused him to call Mr. Cush was transmitted to Mr. Williams, Major Williams via Colonel Westcott. Am I correct?
 - A: Yes.

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- Q: And not Colonel Evanko, make sure the record's clear.
 - A: That's correct.
- Q: All right sir. Well what did he say that Colonel Westcott had told him? In other word what did Mr. Williams say, Major Williams say that Colonel Westcott had told him?
 - He basically, we didn't get into that

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and say, "Hey what's this about? What's going on here?" Was there any discussion like that at all? A: I don't believe there was a necessity for that

- discussion. We were told to gather the facts of this particular incident and that's what we were doing. I believe that the question why would have been answered when the investigation was completed.
- Q: Well you weren't investigating Colonel Evanko were you?
 - A: No.
- Q: Well he is the one, either he or Colonel Westcott were the one's that were initiating this inquiry so the question as to why you were doing this rests with them. Not with Captain Ober. I mean the why questions as to Captain Ober's conduct that you are establishing through a factual investigation. Why you're doing the investigation itself, which I what I'm asking if it ever occurred to you or to Major Williams if you ever discussed that, like you know why are we doing this? What's this about? What's the problem here?

MS. REYNOLDS: I object. Asked and answered

- MR. BAILEY: You can respond sir. It's ok.
- A: It seemed obvious to me why we were doing it. We were told to.

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4	Q: What's his first name right there?
5	A: Tom.
6	Q: I'm sorry. Thomas Williams had he indicated
7	whether he had had any discussion with Colonel Evanko
8	before coming to Phoenix?
9	A: No sir he did not.
10	Q: Did he say how Colonel Westcott had
11	contacted him? In other words had he called him? Had
12	they met?
13	A: No sir he did not.
14	Q: Did he at any time ever indicate attendance at
15	a meeting at a meeting where Colonel Evanko was
16	present or the issue of Mr. Ober was discussed?
17	A: Not that I'm aware of.
18	Q: And I think you indicated that you don't
. 19	recollect him having any kind of documents or any kind
20	of files or anything like that with him?
21	A: If he had anything, it would have been notes
22	regarding the conversation he had with Cush. That would
23	have been all. If he in fact had them and I'm not sure
24	that he did.
25	Q: Have you ever had an investigation initiated by
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1	Ober had done in going to Colonel Hickes in this meeting
2	in Phoenix? You know was it month's afterwards? Was it
3	six months?
4	A: Did I ever learn that?
5	Q: Yeah.
. 6	A: Yes.
7	Q: How long was it?
8	A: I don't know, don't remember.
9	Q: Do you remember whether it was month or
10	was it days?
11	A: I don't remember sir.
12	Q: And you don't know when the Phoenix meeting
13	was? And you don't know how much time transpired?
14	And you don't know how much time had gone by between
15	the Phoenix meeting and when Colonel Westcott had
16	talked to Colonel, or to Major Williams about it. Right?
17	A: I was never told that.

All right let's move those out of the way now.

In relation to this matter what's the next? Did

Did you make any calls back to Pennsylvania

you have any other meetings in Phoenix with anybody,

any more discussions with anybody regarding this

Q: Ok. All right now do you know whether Mr.

Williams, its Larry Williams isn't it?

No sir.

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matter?

A:

Q:

about the matter?

No sir.

one of your superiors when you're off doing a conference or doing something of this manner or are you usually called in the office and sat down while you're at home working on something? A: I don't know if the fact that we were going to a conference had anything to do with the assignment. I think the assignment had come at a particular time and it happened to be at the same time that we were traveling to this conference. And in my opinion that was the only reason that was discussed at that point. Q: Well you weren't given a memo. You said there are no documents. There wasn't a memo, some assignment sheet or any kind of order or anything; or you don't deal with written orders in the State Police? A: It was verbally conveyed to both myself and Major Williams as to what we were. In Phoenix Arizona in at a meeting? That's when it was conveyed to me. Q: Well it obviously had been conveyed to Mr. Williams. A٠ I don't know when. Q: You don't know when. A: No sir I don't. Did you ever learn how much time had passed

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A:

No sir.

Phoenix was, the conference was?

A: It was a few days.

between when Mr. Evanko learned about what Captain

Do you remember how long that meeting in

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back?

5	Q:	And after the conference was over you
6	returne	to Pennsylvania?
7	A:	Correct.
8	Q:	What happens next in regards to this matter
9	let's call	it the Ober matter ok? What happens next
10		g the Ober matter?
11	A:	Major Williams and I spoke to each other on
12	the phon	e. Sort of rehashed what we had gone over in
13	Phoenix	and began to set up times for the interviews that
14	we were	going to conduct.
15	Q:	All right do you have any notes or documents
16	about an	y of this?
17	A:	Not at this point no.
18	Q:	At that point you did not have any?
19	A:	That's correct.
20	Q:	Were you both in Harrisburg, where were you

when you had this phone conversation after you got

I believe in Montoursville. I'm not certain of that.

I was in Bethlehem. I have an office in

Bethlehem. And I believe Major Williams was in his office,

Q: Now did you record that conversation? Do you 2 know whether you took notes during that conversation at 3 all? On the telephone with Major Williams? Well I mean at least take notes. I don't expect 6 you to record it unless both of you wanted to. I'm not implying that you did or would but did you take notes? Anything of that conversation? A: No sir. We merely set some dates as to when 10 we were going to get together to conduct interviews. 11 Well the reason I'm asking that is so, you know, you're talking about who you are going to interview 12 13 or were you just talking open dates or you just discussing actual people you were going to talk to? 14 We had discussed specific people that we were 15 16 going to talk to. 17 Tell us who you talked about talking to? 18 Well we wanted to talk to Captain Ober. A: Q: Naturally. Ok Captain Ober. A: Colonel Hickes. O: Colonel Hickes. Go ahead. At the time Major Conley, Major Merryman, I may mispronounce his name, Sypher, I'm not sure how it's pronounced. He was working for BPR at the time. Colonel Westcott.

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Colonel Evanko and Colonel Coury, to be interviewed. Q: So you're talking 1-2-3-4-5-6-7-8 witnesses to learn the facts about Captain Ober going to Colonel Hickes. Do you know whether Colonel Evanko ever talked to Colonel Hickes about this issue or this matter at all? A: At that point did I know? O: Yeah No I did not know that. We had not conducted A: any interviews. I'm not saying you did. Don't infer. Q: I'm not saying I did either, sir. You asked me if I knew if he had contacted and the answer is no. I know you're not, I just think I asked a very poor question and I'm trying to clarify it because I don't want to be unfair to you. Have you ever learned that prior to the conclusion of your, can you call it an investigation, a fair word I think given the facts? A: An inquiry. I thought you'd come up with that. If you're

A:

time prior to the conclusion of your inquiry whether

comfortable with that we'll call it an "Inquiry" ok. Prior to

the conclusion of your inquiry, did you learn that at any

Colonel Evanko	had	simply	gone t	o Colonel	Hickes	to

- Prior to the conclusion? A:
- Yeah. 0:

discuss this matter?

Ves A:

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- Q: So Colonel Evanko had gone to Colonel Hickes to discuss this matter?
- A: It's my understanding that they had spoken. Who had gone to whom? I don't believe that it was Colonel Evanko that had gone to Colonel Hickes. I think it may have been the other way around.
- Ok so your best recollection is that Colonel Hickes went to Colonel Evanko to discuss this matter and that doesn't mean the meeting where Colonel Ober, Colonel Evanko and Captain Ober were together with Colonel Evanko does it? I mean we're talking about something different than that aren't we?
- A: It's my recollection I believe that Captain Ober was at that meeting.
- Ok aside from that meeting, that being the meeting when Colonel Hickes and Captain Ober first informed Colonel Evanko of the FBI probe, aside from that are there any facts known to you which would indicate that Colonel Evanko and Colonel Hickes discussed this Ober matter?

A:	I believe there was one other meeting between
them who	ere, if I'm not mistaken Colonel Coury may have
been pres	sent.

- And do you know what happened at that meeting. I mean during your inquiry I'm assuming that you made notes and investigated that.
 - A: It was part of the report.
 - It was ok. Well tell me what you found out.
- Basically that there was that meeting. The specifics I do not recall.
- O: You don't know what happened in that meeting or during that meeting.
- It was discussed as to why Colonel Evanko A: wasn't informed.
- Well was it discussed if Colonel Hickes should be disciplined do you know?
- At that meeting? A:
- O: Yeah.
 - Not to my knowledge. A:
- Q: Were you ever asked to investigate Colonel Hickes?
- I wasn't asked to investigate anyone in particular. We were just asked to gather the facts regarding how this information got to the department and what was done with it and what was not done with it.

1	Q: Well when you did your inquiry you read some	1	warnings to anyone except Captain Ober?
2	warnings or some advisory rights of some type to Captain	2	A: I know there was at least one other person that
3	Ober didn't you?	3	was, warnings were read. I don't recall who that is.
4	A: Yes.	4	Q: You interviewed Major Connelly. Right?
5	Q: What other witnesses did you do that with?	5	A: Correct.
6	A: I don't recall. Possibly one other but I'm not	6	Q: And you interviewed Major Merryman?
7	sure who.	7	A: Correct.
. 8	Q: Who might that be? You don't recall?	8 .	Q: There's a Sypher or Slipher or something like
9	A: No sir I'm not sure who.	. 9	that who was working in BPR at the time that you
10	Q: Well was it Colonel Hickes?	. 10	interviewed. Is that right?
11	A: It possibly could have been but I don't recall.	. 11	A: Correct.
12	Q: Do you have a copy of any notes or what not	12	Q: And you interviewed Colonel Westcott, Colonel
13	that you did during the, you know personal notes that	13	Evanko, and Colonel Coury.
14	you did during the "Inquiry?"	14	A: I believe so.
15	A: No sir.	15	Q: Why did you interview Colonels Westcott,
16	Q: So you turned everything in right?	16	Commissioner, I guess full Colonel Evanko, and
17	A: I-kept nothing sir.	17	Lieutenant Colonel Coury, why did you?
18	MR. BAILEY: Hole it one minute please.	18	A: To determine exactly when they had discovered
19	END OF AUDIOTAPE SIDE A- TAPE ONE	19	this information or when it was related to them. So that
20	MR. BAILEY: Did you in fact end up interviewing	20	there would be a complete report as to when the
21	Captain Ober?	21	information came in, what was done with it and when
22	A: Yes.	22	they were advised of that information?
23	Q: Did you end up interviewing Colonel Hickes?	. 23	Q: Well who was present when colonel Hickes and
24	A: Yes.	24	Captain Ober told Colonel Evanko?
25	Q: But you don't remember whether you read	25	A: I don't remember that.
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1	Q:	Do you have a recollection of anyone else being
, 2	present?	, -
3	A:	I don't remember who was there sir.
4	Q:	Do you have a recollection of how long these
5	interview	s lasted?
6	A:	What interviews sir?
. 7	Q:	Interview with Major, or with Colonel Evanko?
8	A:	No sir. Not a very long time.
. 9	Q:	And how about Colonel Westcott?
10	A:	Same.
11	Q:	And Colonel Coury?
12	A:	Same.
13	Q:	Did you read them any rights?
14	A:	No sir I don't believe so.
15	, Q:	Fact is that Colonel Evanko was the
16	complaini	ng party was he not?
17	A:	I don't know if there complainant on it. The
18	only infor	nation that I had came from Colonel Westcott
19	at Phoenix	τ.
20		Well when you start an investigation or an
21		whatever you have some type of mandate don't
22	you, some	kind of direction to do something or begin
23		. Is that right?
24	A:	Yes sir and that came from Colonel Westcott.
25	Q:	And you have a duty if somebody is the object

of the inquiry to give them notice. Right?

- A: That depends on basically what it is that's being done. I mean we weren't looking at a criminal type of a matter if you will.
 - Q: Why not?

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- A: At this point we didn't feel that there were any crimes violated.
- Q: I mean was there a possibility that Captain Ober was covering for somebody below and didn't want to tell the top authorities about it or something?
 - A: It did not appear to be.
 - Never received any facts like that?
- It did not appear to be that Captain Ober had conducted anything that was of a criminal nature at the time that we conducted the interview with him.
- Well had he conducted? What had he done wrong?
- We didn't know. That's why we were conducting the interview. We had no information that he had conducted anything in a criminal manner.
- Q: Well did anybody anytime tell you we think he did this wrong or that wrong?
- A: That's what we were asking. Basically to find out what it was that he received, what information he received, what he did with that information.

- Q: Now I don't want to offend you and I've asked you probably that question in a different form maybe a dozen times?
 - A: Yes sir.

- Q: You're getting tired of it aren't you? Right? I mean its, you know. I'm not trying to irritate you but I'm going to try to change gears a little bit ok? Were you on a fishing expedition? I mean have asked you that question about what this was about a dozen times or better at least. What was this about? You know, were you on a fishing expedition? Is that what you were doing?
 - A: I don't believe so.
- Q: Well you've told me at least a dozen times I think in fairness to you and in fairness to me that you're there to find out the facts.
 - A: That's correct.
- Q: You know as a trained police officer and I know as a lawyer in this constitutional system that before we read people rights, sit down and ask them questions, make notes on what they do, order them to do things, etc that you have reasons to do that. I'm looking for the reasons.
- A: Reasons were that we were instructed to gather the facts regarding Captain Ober obtaining this information and what he did with it.

discussed if you will in that phone call. To the best of my recollection those were the people that were eventually interviewed. Whether we had all of those people at the time I can't be sure. Eventually that's who we did talk to.

- Q: Major, give this question; I want you to sit back in your mind and go back over this. I want you to give this question your utmost attention, please. After you came back from Phoenix, until you and Major Williams completed the inquiry, the investigation, whatever you want to call it, ok. Inquiry. Ok until you completed the inquiry to use your word, did you or Major Williams check with or discuss the progress of your inquiry with any superior officers at all? And if so, when and who? Now think carefully please. I really want to know the answer to this.
- $\label{eq:A: I can only answer for myself and the answer to that question is no. \\$
- Q: All right. I assumed, I was hoping that was going to be your answer. Now because as I understand it, it would have been inappropriate to do otherwise or would it not have been? Let me put the question this way. Would have been inappropriate for you to have discussed the progress of your inquiry with Colonel Evanko? You told us that he was going to be a witness about this procedure and I want to know if, you also

- Q: And the underlying fact is nobody ever told you why you were doing this, did they? Or did they?
 - A: Gather the facts.
- Q: Well we <u>lie</u>, all right sir, we know that they told you to gather the facts. Now my question again is no one told you why you were supposed to gather these facts. Now if they did you tell me. I don't know the answer to that question and I'm not trying to be unfair to you and I'm not trying to irritate you. I'm still looking for the answer to that question.
 - A: I believe I've answered that question.
 - Q: You do?

- A: Yes sir I do. We were told to gather the facts and you can say why were you told to gather the facts and you can say why were you told to gather the facts obviously to inform Colonel Evanko as to what occurred. Now you can continue ask why and why and why but I've answered the question that you've asked.
- Q: Now when you and Mr. Williams, Major
 Williams talked on the telephone that day after you got
 back from Phoenix you'd indicated a number of witnesses
 that you talked about scheduling witnesses. In other
 words in order to do a schedule you had, who came up
 with this list of witnesses.
 - A: I'm not sure that the, that entire list was

Colonel Westcott was supposed to be a witness, a fact witness in this inquiry and what I'm looking for is during the course of this inquiry into Mr. Ober's affair in reporting to Colonel Hickes I want to know if you discussed the inquiry, what you were learning or what you should check into with Mr. Evanko or Mr. Westcott?

 $\ensuremath{\mathsf{MS}}.$ REYNOLDS: I object as to form but witness can answer.

MR. BAILEY: You may respond.

- A: To the best of my knowledge this with either Colonel Westcott or Colonel Evanko.
- Q: Is it fair to say that during the course of the inquiry aside from doing the things that you do during an inquiry, you know questioning people and gathering information, your investigation or your inquirization or whatever it is that the only person that you discussed the progress and nature with would have been Major Williams?
- A: To the best of my recollection that's the only one I ever spoke to.
- Q: Now, Major Werts, during the course of the investigation did Mr. Williams ever indicate that he had discussed the progress of the investigation or the inquiry with Mr. Evanko or Mr. Westcott or anyone above him in the chain of command?

3	A: Not to my knowledge, I don't particularly recall			
4	him ever telling me that he spoke to anyone.			
5	Q: Ok, all right. So it was either you and, or it			
6	was you or, Major Williams that originated the idea of			
7	interviewing the witnesses that you had mentioned here.			
8	Is that fair to say?			
9	A: Yes.			
10	Q: Now when you went to see Captain Ober didn't			
11	you present him with a piece of paper or something			
12	saying that this is what this things about?			
13	A: There was I believe an administrative warning.			
14	Q: Does this look like it right here. Want to take a			
15	look at that? Let her take a look at that.			
16	A: I believe this is a copy of that form.			
17	Q: Ok do you have a recollection of whether you			
18	gave Captain Ober anything else? When you went to talk			
19	to him.			
20	A: I do not have a recollection of that no. Would			
21	you agree with me that this is a form entitled			
22	Pennsylvania State Police Notification of Inquiry? I'm			
23	trying to get the form number off here. This is what age			
24	does to you here. SP 1-102 with a date of 8/93. Is that a			
25	form you are familiar with? And it may not be. Don't			
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1	A: I'm sorry I don't understand what it is you're			
2	getting at.			
3	Q: Under box three looks to me when I saw it and			
4	I may be missing something here, that there's a, it says			
5	office of Chief Counsel is "Xed" out and Commissioner is			
6	typed in.			
7	A: Yes sir.			
8	Q: Am I in error?			
9	A: No.			
10	Q: I am correct? Rarely that I am except for these			
11	kinds of cases. Ok now who crossed out Office of Chief			
12	Counsel and substituted, typed in Commissioner?			
13	A: I believe it was Major Williams but I'm not			
1.4	sure			

You're not certain.

No sir I do not.

Now do you know when he did that?

Pennsylvania State Police Commissioner, Paul J. Evanko,

knowledge of the facts or circumstances surrounding the

political corruption investigation that was conducted by

the FBI in western Pennsylvania. See political corruption

I have been assigned to make inquiry into your

And underneath that it says by order of the

No sir.

Q:

A:

Q:

A:

there?

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Beyond the preliminary instructions?

Yeah beyond Phoenix of course.

Q:	Ok you can hold it for a second there. If you
look I the	third box there, the third box that's checked. It
got an 'X'	'in it. See that?
A:	Ok, read what follows that box. An
administ	rative investigation is being conducted pursuant
to a requ	est from the Commissioner. Your involvement
	identified as follows.
Q:	Now somebody 'Xed' that out right?
A:	Yes they did.
Q:	And what's underneath that on that form
normally	?
A:	Some type of an explanation as to why we're
conducti	ng the investigation or inquiry.
Q:	And who does it say is, some kind of an
explanati	ion as to why. And what's in replace of it? What'
"Xed" out	t and put in replace of it?
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۸.	Vec
	Yes. Well who decided this was a political
Q:	n investigation?
A:	That this was a political corruption
	ion? That's not what that says.
J	This wasn't a political corruption investigation
Q:	ims wash t a political corruption investigation
was it?	mission was not a political comunition
A:	This inquiry was not a political corruption
investigat	
Q:	Well what was this inquiry?
A:	This was an inquiry into the facts of how
	Ober got information regarding a political
	n investigation in western Pennsylvania.
	There wasn't any question on how he got the
	on was there? That was known wasn't it?
A:	Your first question related to this being a
	corruption investigation. This is not a political
-	n investigation.
Q:	Ok in fairness to you what you're trying to say
	he facts and circumstances surrounding the
•	ng investigation right?
A:	The investigation?
Q:	Right.
A:	Yes.
Q:	And there's an acknowledgement here

separate those if you can but please take a look at that.

Notification of Inquiry.

them and we didn't make it up.

you know?

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A:

Your eyes look like they're better than mine. Look at that in the upper right hand corner. Just identify that for me.

A: SP 1-102. 8 of 93. Pennsylvania State Police

Q: Is that a standard form do you think? Or do

If it has that number on it there's more of

apparently	y or an idea that this underlying investigation
was a poli	tical corruption investigation. Right? That was
the under	lying thing that Mr. Ober had been contacted
about.	
A:	The political corruption investigation was the
investigat	ion that the FBI was looking into in western
Pennsylva	nnia.
Q:	And do you know, did you ever look at any of
the mater	ials involved in that underlying investigation?
A:	Yes there were statements that were, at some
point sup	plied to us.
Q:	And who supplied them to you?
A:	My understanding is the FBI.
Q:	Ok, who in the FBI supplied them to you?
A:	The only individual I know was Cush.
Q:	What did he provide to you?
A:	There was recording of statements between the
Trooper a	and I believe an informant and an applicant.
Q:	Was the governor's office ever mentioned sir?
A:	The Trooper I believe at some point during one
of these t	apes mentioned the governor's office.
Q:	Well was any state senator ever mentioned?
A:	I believe the Trooper mentioned that.
Q:	Well the Trooper we're talking about was one of

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Q: All right. Do you have any recollection or any knowledge why the office of chief counsel was "Xed" out and Commissioner was substituted? Not who did it but why that was done?

the subjects of the underlying political corruption

A: No sir.

Q: Did you ever discuss that with Major Williams?

A: No sir.

Q: Do you know whether, were you present when the interview was done with Colonel Evanko?

A: Yes.

Q: Now was that before or after the interview with Captain Ober?

A: After

Q: So after Colonel Evanko had ordered an investigation into the conduct of Captain Ober you sat down with Colonel Evanko as a fact witness in this matter? A decision that was made to the best of your knowledge by you and Major Williams?

A: Correct.

Q: Sir if we can, I'm going to try to change gears on you just a little bit. I'd like to go to the interview. I want you to go back and sort of get your mind in a sort of a change-up here. I want to ask you some questions now about the interview with Captain Ober.

A: Yes sir.

investigation wasn't he?

A: That's correct.

Q: All right sir. Was a state representative ever mentioned?

A: I don't know if it was a Senator or a Representative or both but there was.

Q: Well I can tell you I think it was both. I want you to think back and tell me though because you saw these documents. If you remember was it both or just one, but you do remember the governor's office right?

A: The governor's office, not anyone in particular was mentioned and there was either a state representative or senator that was mentioned.

Q: Or both?

A: That's possible. I don't recall it.

Q: Well I can assure you it was both. Now so there was never any question that rightfully or wrong fully there was a bona fide political corruption investigation whether justified or not regardless of what the outcome was, being conducted by the FBI right?

A: Being conducted by the FBI yes.

Q: And the State Police were not, aside from Captain Ober being notified were not involved in that investigation. Am I correct?

A: That's correct.

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1 Q: One last question before I get there. Do you 2 know who prepared this form here? The notification of 3 inquiry form?

A: No sir I do not.

Q: You know you didn't though?

A: Yes sir.

Q: And you know that you didn't cross out the office of chief counsel and substitute commissioner?

A: That's correct.

Q: How many of these inquiries have you done in the past? Just a few more questions and then we'll move on to the investigation, the interview. How many of these kinds of things have you done?

A: Never.

O: Never?

A: If you're talking about something other than a BPR investigation,

Q: No I know that most of you

A: Because a BPR investigation, I've conducted a number of those.

Q: Yeah, I don't think there's probably an officer that I know of in the State Police above the rank of Captain, or Captain or above who hasn't been assigned that duty. And I'm sure it's not a pleasant one but I know that you do it. You have to do it. I did want to ask that

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because up there, do you see the block up there? Look at the upper right hand block. You see the little letters BPR and then a dash?

A: Yes.

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- Q: What's that block for?
- A: There's a number put in there by BPR when its' an internal affairs investigation.
 - Q: But there's no number here?
 - A: That's correct.
 - Q: Do you know why?
- A: To the best of my knowledge at the time it was not an internal affairs investigation.
- Q: Was it an external affair, I mean is there a term external affairs investigation?
 - A: No sir there is not.
- Q: What's an administrative investigation? I mean let me tell you. These three blocks here: complaint investigation, a non-complaint investigation in accordance with department directives and an administrative investigation. What's the difference between those, if you know what those things are?
- A: A complaint investigation normally comes from a member of the public who is complaining about the conduct of a Trooper. You have a complaint. A noncomplaint investigation there are certain actions

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violated, that you know of, that you can recollect.

- A: As I recollect there was regulations within the bureau that required members of the Bureau to report specific investigations to the Bureau Director so that that information could be given to the necessary deputy commissioner or commissioners if that in fact was needed. It is my understanding that Captain Ober failed to do that.
- Q: Ok, well who decided that he failed to do that? Is that your conclusion?
- A: That's my conclusion based on the information that came out of my investigation.
 - Q: Is that a chain of command violation or?
 - A: It could fall under that label if you will.
- Q: Well what regulation deals with chain of
- A: There's a host of regulations about reporting information.
 - Q: Like?
- A: You're required to report information when it comes to you attention. There's a regulation within the Bureau of Professional Responsibility that you are to report information regarding an investigation to the Bureau Director.
 - Q: So this was a political corruption investigation

sometimes committed by Troopers that require an investigation even though there is no complaint. Firing a gun

- Q: A gun is discharged.
- A: That's right.
- Q: There's a need to, go ahead.
- A: And an administrative inquiry or investigation as this was is looking into facts regarding possible violations of regulations, looking at the way things were done to insure that things were done either correctly or was there an error committed by anyone.
- Q: What were the possible violations of regulations, if there were any? I'm not saying there were any. Do you know of any?
- A: The possibility existed. At what point do you want me to answer this question?
- Q: When I'd asked you this you told me, I'm not being argumentative with you, I want you to know I think you are an extremely professional witness and I think that you appear to be making every effort to me to be making every possible effort to be truthful and open. I want to tell you I respect that in you. I'm not being argumentative. It comes back to the same difficulty that I'm having though, ok? At any point what were the possible regulations that this man, that Mr. Ober

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and Captain Ober had a duty to report it right on up the chain of command, huh?

- A: Well he was supposed to report it at least to his supervisor.
 - Q: And who was his supervisor?
- A: It could have been one of two people. Major Merryman, however I think major Merryman had already left the Bureau and was replaced by Major Conley.
- Q: Well now as I understand it your inquiry, of course Mr. Ober had indicated this, Mr. Ober had gone to Mr. Hickes. Right? Colonel Hickes.
 - A: That's correct.
 - Q: What was Colonel Hickes title?
 - A: Deputy Commissioner of Staff I believe.
- Q: That doesn't cover you when you're reporting? I mean that doesn't
- A: The staff Deputy Commissioner is certainly not in his chain of command.
- Q: Ok, where's the regulation that deals with the chain of command that you have to report in the chain of command?
- A: There's an organizational chart that shows you what your chain of command is.
- Q: Yeah but what's your violation if you, you know. Let's say you have a problem with your immediate

he went to Hickes and violated, apparently, his chain of

command. Now all I want to know is what the regulation

Bureau Director. Now that being said you're going off on

something else if I have a problem with my supervisor do

I go around it and I don't think that has anything really

straighten me out. You said you reached the conclusion

Q: All I'm asking you is what the regulation is

MS. REYNOLDS: I'm going to object at this point in

time. He's already answered that question. He said it was

a regulation within the Bureau and he said he couldn't

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that he violated. Now if you're saying it's a custom of

redact it, you can change it, you can correct me if I

that you said he had not gone through his chain of

command, which you said was Major Conley.

practice and usage or the way you do things.

misunderstood you. If I mischaracterize you, you

Q: Sir, you told me, your words were, not you can

to do with what we're talking about here.

A: I can't be specific. I can tell you that during

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I'm still waiting. 25

supervisor. Are you telling me that regulations preclude you from going around that supervisor?

MS. REYNOLDS: Already asked and answered.

MR. BAILEY: You can respond sir. I don't agree with that by the way but you may respond.

- What's the problem we're talking about?
- Q: I haven't heard a regulation yet. I want to know if there is a regulation, which says, I'm having a problem with my immediate supervisor in the Pennsylvania State Police. I want to know the regulation, which says I cannot go collaterally, either around or above an immediate supervisor. I mean I see tons of these cases. I deal with them all the time.
- A: Yes but you have to stay within your chain of command. Lt. Colonel Hickes is not in Captain Ober's chain of command at the time.
- Q: Ok and what's the regulation that say's you have to stay in the chain of command. That's what I'm looking for. In fact we could solve all of this if you just give me that regulation.
 - I don't know what it is.
- Well you investigated this matter Major, and again I'm not being argumentative. You investigated this. You just finished telling us that in your view what this man did wrong, what Captain Ober did wrong was that

the course of the investigation it was determined that there was written regulation within the Bureau that said that said that members of the Bureau are to report investigations up through the chain of command to the

is that he violated.

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A: That's correct.

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determined to be a regulation within the Bureau that said you had to report investigations that come to your attention up through the chain of command to the

Q: Well did you consult any of the, you have excellent legal staff in the Pennsylvania State Police, did you consult any of them about what the, what regulation he had violated? I mean I know you don't remember it but I'm asking you

A:

Bureau Director.

- Q: You did not? Why not? I'm not saying you should have. I'm just asking why not?
 - A: Didn't see there was a necessity to do that.
- O: Is it fair to say that if I go back and look at the investigative or the product of the inquiry, the final result of the inquiry that it will indicate the regulation or the rule that he violated, that Captain Ober violated?
- A: I believe there's something in, contained in the statements that we reduced to writing regarding reporting that information.
- O: Ok sir. Do you remember if that information came from a witness or if this was a conclusion reached by you and Major Williams?
- A: It is my understanding that during the course of the interview, I'm not sure with who, that that

be any more specific than that. He said that several

MR. BAILEY: So you reached the conclusion that he violated a regulation but you don't know what the regulation is. Right? Right?

- A: I've told you that there was a regulation within the Bureau. To quote it, I cannot do that.
- O: Well does it appear in your report. Did you put 'Subsection C' in his report, in your report? 'Subsection C' of who knows what regulation?
 - A: No.
 - Q: No? Any reason why not?
- A: We didn't, that, we didn't determine what regulations specifically were violated. You asked me
 - Q: Exactly
 - Excuse me? A:
 - Q: I'm sorry.
- A: You asked me what me opinion was on what he had violated. I gave you my opinion. Did I put it in the investigation? No.
- Q: I didn't ask you what your opinion was. I asked you what you based your conclusion on sir. And
- My conclusion is based on the information that I determined to be or that Major Williams and I

information became available to us.

- Q: All right let me see if I can understand your response. What you're saying is that your best recollection is that there was a regulation violated by Captain Ober came from the interview of a witness?
 - A: To the best of my knowledge, yes.
- Q: Fine sir. Sir do you remember what witness that may have been?
 - A: No sir I do not.

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- Q: Do you have a recollection of whether or not that information is included in your report? I mean do you remember if it was like noted in there or cited in there like, here's what I mean sir. So you have a recollection whether or not your report would say Colonel Westcott, Colonel Evanko, Captain "X", Lieutenant "Y", indicated that this violated or may have violated rule X, Y, or Z. do you understand what m saying?
 - A: Yes sir.
- Q: Do you know whether that's in there, anything like that?
- A: There is nothing in there like that. Basically the report that was submitted are the statements of the witnesses and only the statements of the witnesses, verbatim.
 - Q: See that's why I asked that. That's when, in

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- A: He was presently the Director of the Bureau of Professional Responsibility.
- Q: And I'm going to assume that a related reason for representing Colonel Hickes was what?
 - A: The reason for interviewing Colonel Hickes?
 - Q: Sure.
- A: Was that Captain Ober had gone to Colonel Hickes
- Q: Because Colonel Hickes was neither one of those things. He wasn't the immediate supervisor before or after of Captain Ober right?
 - A: Your statement is correct.
- Q: That's right. So you went to Hickes to find out from Hickes why Mr. Ober went to Hickes, to see what Hickes knew about that. Right?
- A: Well basically to find out what Captain Ober had informed him, when he informed him of it and then what Colonel Hickes did with that information.
- Q: That's where I really, I need some help with this case. Forget the why. We know that Captain Ober goes to Colonel Hickes right?
 - A: Correct.
- Q: You indicated you're trying to find out what Captain Ober told Colonel Hickes right?

fairness, again I'm not interested in trick questions and so counsel was here so maybe she can help me. When we interviewed Mr. Williams, I think Mr. Williams said something basically pretty much the same. That the report was basically these facts or whatnot, these interviews and that sort of conclusions together. That's why I'm asking you the question about where the source of this, ok? Because if you didn't come up with it and obviously it doesn't sound to me like you originated it. It doesn't sound to me like Major; do you understand why I'm asking that now?

A: Yes sir.

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- Q: Ok, I mean we'll just have to check those things to see. But when you do this kind of an inquiry, do this kind of an investigation you don't reach some conclusion like I recommend a punishment or anything like that? That has nothing to do with it right?
 - A: That's correct. No recommendations were nade.
- Q: The purpose in interviewing Major Merryman was what? The purpose now, I know he's down there as a witness. What was the reason?
- A: He had been the Director of the Bureau of Professional Responsibility.
 - Q: And the purpose of investigating Major Conley

- A: Well we'd already interviewed Captain Ober so we have an idea of basically what he's told them.
- Q: Well you have an idea of what he recollects telling them.
 - A: That's correct.
- Q: What were you going to learn from Colonel Hickes?
- A: What he recollected, what he was told and why.
- But was there any question about what was said? Let me tell you where I'm coming from so you understand. Before you interviewed Ober and before you interviewed Hickes, before you interviewed Merryman and before, if I understand you correctly, you knew that an FBI agent had provided materials to Ober that raised questions about the governor's office. Now if I'm wrong on my time line you correct me, ok. So please pay attention. My understanding is that you had information about possibly the governor's office and you don't remember if it was one or the other but a state senator or a state representative and I chimed in that it was both. You knew that the background was a political corruption investigation ok? Now you go to Hickes on what, what did you need to ask him? I mean you knew that there was no secret that Ober had gone to Hickes. They had come

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together and told Colonel Evanko that correct? Am I right? A: That's correct.

Sure. That was a known fact. What did you want to learn or why did you want to learn what Ober said to Hickes?

A: Well, number one it completes the investigation.

> It's just dangling there. Q:

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You verify number one what Captain Ober has told us that he has said with the individual that he has said it to. And in addition we wanted to find out what Colonel Hickes had done with that information and when.

Q: Were you investigating Colonel Hickes?

A: I wasn't investigating anyone in particular to the best of my knowledge. I was sent to gather facts.

Q: Well I saw this form here that you gave to Mr. Ober and that's a, I mean that's into him. That inquiry is into him, he's read rights and everything you know.

A: That advises him as to what his rights are. It seemed to me that he's the first one that we spoke to that he should know what his rights are and that's why he was told these things.

Q: Did Colonel Hickes violate any regulations? Do

you remember?

A: I'm not sure of that.

Do you recollect whether Colonel Hickes that Mr. Ober may have, during an interview may have violated a regulation or a rule?

To the best of my knowledge he did not.

Well did Commissioner Evanko ever give you; did you ever see any notice from Commissioner Evanko to check in to what Colonel Hickes did?

Specifically no.

Q: No. Did Mr. Hickes indicate that he had given Mr. Ober any orders about the information?

Basically he told, if I remember his statement he told Captain Ober that he was to keep the information confidential at that point.

Now what if Mr. Ober had not obeyed that order and had then gone to Mr. Conley? Does that, or I mean would that have violated a rule, if you know, and I'm given that you may not know?

A: That didn't occur.

Q: No it didn't occur, apparently didn't occur. Apparently Captain Ober followed orders but if he had, would that have violated a rule?

A: Possibly.

Did you ask Captain Ober if he intended to go

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and talk to Mr. Conley? Did you even ask him?

A: I think the question, and again I am trying to recall exactly what transpired during the interview. I believe the question was asked as to why it wasn't discussed with his supervisor.

Q: But you knew, you knew when Mr. Conley came on station didn't you? You checked that out because you investigated this. You know when he came on to his duty station right?

When he came on to the duty station, I don't understand that concept.

Sure wasn't he newly assigned? Wasn't there a Q: change?

A: Oh yes, yes.

Q: That's why you went to Mr. Merryman wasn't it. There was a change. Right? It was Mr. Merryman or Mr. Conley right?

A:

Ok. Now in terms of violating these rules, what I'm curious to know is if Captain Ober goes to a Lt. Colonel in the Pennsylvania State Police that says keep it confidential and Captain Ober doesn't go and tell Mr. Conley, I mean is there a timeline when you're supposed to tell somebody something? Let me do it this way sir because I don't want to be unfair to you. If I go to my

immediate supervisor and tell them about something that happened that I think is important and of interest to the Pennsylvania State Police ok. And at the same time I go to a Lt. Colonel in the Pennsylvania State Police and tell them about it. What department rule or regulation have I violated there. Does the rule say "Thou shalt only speak to thine immediate supervisor period under penalty of." I mean that if Captain Ober goes to Colonel Hickes says 'be quiet' and there's a change of command going on, Mr.

Conley isn't there, did you develop any facts or any information to indicate that Captain Ober intended and was not going to go and talk to Mr. Conley? That's all I'm asking.

> That he was not going to go to Mr. Conley? A:

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A: He had the opportunity to and he didn't. You know you mentioned before about this being a paramilitary organization.

O: Yeah.

> Then clearly understand. We know who our bosses are and we know how to get I touch with them. Captain Ober failed to do that.

He was ordered by Lt. Colonel Q:

Afterwards.

After he had the opportunity of discussing it O:

with his supervisor. Q: What's the rule say, what's the rule that says 2 you have to go to your supervisor first and by the way 3 have you ever been in the military, in the service. 4 Yes sir I have. 5 Q: Which branch? A: I was a Navy Corpsman with the Second Marine Division. 8 Q: Ok, well I've been in the United States Army. I don't know how you do things in the Marine Corp. I know 10 of absolutely no rule in the United States Army that 11 limits me to telling my Captain something if I'm a 12

A: You're turning this around.

MS. REYNOLDS: I'm going to object. This is _

Lieutenant and I can't mention it to my Lt. Colonel who is

MR. BAILEY: Well let me not turn things around. Let's look at the facts. Ok? Are you saying that Captain Ober should have told Mr. Conley first?

That's all he had to do was tell Mr. Conley. A:

my battalion commander.

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That who was his supervisor. A:

No. My question is 'first,' did he have to tell Q: him first?

He should have gone up the chain of A:

that there was a political corruption investigation. Right?

A: Yes.

Q: And you knew that that political corruption indicated that there was a

END OF AUDIOTAPE ONE - BEGIN AUDIOTAPE TWO MR. BAILEY: You knew when you did the investigation, some background of the investigation. Mr. Williams had talked to Mr. Cush, you were aware that there was a political corruption investigation, the governor's office was mentioned, perhaps someone in the legislature and that these influence peddling was being, these references were being made by a Pennsylvania State Police Trooper. You knew that.

A: A Trooper, yes.

Q: A Trooper. Now I assume that in fairness to the integrity of the investigation that you searched for reasons or facts that would have lead Captain Ober to go to Mr. Hickes and not to Mr. Conley if you had felt that he had done something wrong in not going to Mr. Conley. In other words, was there any reason that he shouldn't have gone to Mr. Conley that you knew of? I'm not saying there was. I'm just saying do you know any reason why he shouldn't have?

A: I know of no reason why he shouldn't have gone to Conley.

command. That's who he should have told first. Yes.

Q: And by going up the chain of command you can't go outside that chain of command. You're not supposed to tell anybody outside that chain of command.

Well

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Q: No. No what's the rule that prevents him from telling Colonel Hickes? That's all I'm asking.

A: I don't believe there is a rule that prevents him from telling Colonel Hickes.

Q: Neither do I.

What I'm saying is that he violated the order, or the regulation within the Bureau that says you're to notify his supervisor. Now he knows who his supervisor is and that's who he should have gone to.

So he should not, he should sit on information until he can tell his supervisor?

A: I don't see any reason he had to sit on it. He could have notified him immediately.

Q: Well did you check into the duty assignments of Major Conley before he was Captain Ober's supervisor?

A: The duty assignments? I know he had been 21 recently transferred in there. 22

Q: Sir this piece of paper, Exhibit, well it's Exhibit A on this document. You can disregard that. But this notification of inquiry that went to Captain Ober says

Q: Ok, well should he have gone straight to Colonel Evanko and not told anybody? Would that have been proper? My opinion on this is according to the regulation

contained within the Bureau; he should have gone to the Bureau director. That's where he should have gone to first. He shouldn't have jumped to a Deputy

Commissioner; he certainly shouldn't have gone to the Commissioner. He should have gone to his supervisor,

who is the director of the Bureau of Professional Responsibility.

Q: Did you ever ask the FBI why they went to Captain Ober?

They apparently were seeking information that they thought could be obtained through the Bureau of Professional Responsibility.

Q: Well here you have the FBI

A: And I didn't ask that question. I never spoke to Cush.

Q: Well if you know if anybody ever asked Cush why they would not notify out of courtesy the Commissioner first?

A: No sir I don't.

Head of the Pennsylvania State Police, you got the FBI down there highly touted as a great law

enforcement agency, one of the best in the world. They still don't tape interviews; they use agent's notes. But, you know, I'm just curious why as a courtesy the FBI wouldn't tell the Pennsylvania State Police that, you know, what they were doing and say you know go through the Commissioner's office as a professional courtesy.

- A: That's a question you would have to ask him sir.
- Q: I intend to. I certainly intend to. But you didn't and you don't know whether Mr. Williams did. Right?
 - A: Did what sir?

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- Q: Ask the FBI or anybody in the FBI why they didn't say 'Hey why didn't you folks come in here and contact the Commissioner and let us know?' you're here checking into our affairs and you didn't tell the Commissioner.
 - A: I never asked that question sir.
- Q: Well do you have a recollection of how long after Captain Ober heard from the FBI that he went to Colonel Hickes?
- A: A short period of time. How long I don't exactly know.
- Q: Do you know whether Major Conley was even available?

that indicates that, you know this word instead, that he decide to go to, and I'm saying he didn't. I'm not saying he was wrong. I'm not, you know, I don't know. But did he exercise some judgment to exclude Conley and go to Hickes because you already told us he didn't break any rule by telling Hickes but we know that Hickes ordered him to keep it confidential. Now what's he supposed to do now? Do to the Commissioner to say do I have permission to talk, cause the Colonel, Lieutenant Colonel told me not to talk to anybody.

- A: The fact is that he failed to notify his Bureau Director. Now you can't turn this around and say ok now why after Hickes tells him not to go back did he not go back and tell Conley. It was already too late to do that. He failed to do that to begin with and went to Hickes.
- Mr. Conley was at the time that Mr. Ober was told?
- of a, either a death in the family or a death in or the

A. What up you mean by avanabi	A:	What do	vou mean	by available
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- Q: Well you're opinion was that Captain Ober apparently should have held this information until he could tell his supervisor.
- No sir that's not my opinion. My opinion is that he should have notified his Bureau director by any means possible regarding this investigation. Find him. Pick up the phone and call him if he's not there.
- Q: Instead he told Colonel Hickes, a Lt. Colonel a top administrator of the Pennsylvania State Police that comes directly under the Commissioner.
 - A: Yes sir.

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- Q: And who orders him not to tell anybody else and you're telling me that's the way a military outfit runs or that's the way the State Police run and there's a regulation that says that violates the rules?
- A: No sir that's not what I said. What I said was there was a regulation within the Bureau of Professional Responsibility and the regulation requires a Captain to notify the Bureau Director. He failed to do that. He went to Colonel Hickes. Colonel Hickes issued and order for him not to say anything.
 - Q: See that's where you and I
 - That's. That's the order in which this occurred.
 - Yeah, I'm sorry. What information do you have

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- I don't know sir. I don't have those dates and I don't remember. Q: Isn't it, but you investigated that?

 - I believe it's in the report. A:
 - Now you had indicated that the interviews with Mr. Evanko and Mr. Westcott and Colonel Coury didn't last very long. Correct? Did you at any time ask them, the Commissioner what he was complaining about?
 - A: I don't believe that question was asked.
 - How about Colonel Coury? Did you ever ask Colonel Coury what he was complaining about or was Colonel Coury complaining at all? Did he complain at all?
 - They were asked what knowledge they had of the incident, how it occurred and how it came to their attention and when it came to their attention.
 - Is it fair to say that Colonel Coury professed that he didn't know anything about it?
- I don't know if he didn't know anything about it. I don't believe that's accurate.
 - O: Well who did he learn about it from?
- A: I don't know.
 - Well you found out that Colonel Hickes had O: told Mr. Ober that you're to keep it confidential, right?
 - A: That's correct.
 - And apparently, apparently Captain Ober

Q: You've answered my question. A: Thank you. He failed to do that. Ok. Do you know where A: I believe he was, I believe there was some type death of a friend and he was in western Pennsylvania. Q: Do you know when he came into the office? It was the next day. А٠ What date was that?



1	obeyed that order and didn't tell Major Conley.	him. I don't remember.	
2	A: Yes.	2 Q: Oh, I'm sorry. I thought, ok, you don't kno	w
3	Q: Who, you say, he should have told first before	whether he was interviewed?	
4	he told Colonel Hickes even though there's no rule that	4 A: I don't remember sir.	
5	says you have to tell your immediate supervisor first. But	Q: Did you ever talk to him about though that	it
6	what about Colonel Westcott, did he indicate where he	6 was my question?	
7	learned about this matter from?	7 A: If he wasn't interviewed he wasn't spoken	to,
8	A: No I don't believe he did. He had the	8 not to me about it.	
9	information that he gave to me and to Major Williams. I	9 Q: Ok, how long did your interview go with M	ajor
10	believe that at some point he said the information came	10 Merryman?	
11	from Colonel Evanko.	11 A: That was a very short interview.	
12	Q: Exactly what I'm looking for.	Q: Merely asked him if Captain Ober told him	1
13	A: Isn't it true that Colonel Coury and Colonel	anything about it right?	
14	Westcott learned what they knew about this incident	14 A: That was asked. We got into when he was	
15	from Colonel Evanko?	transferred, what his duties were with respect to the	
16	A: I don't know where Colonel Coury obtained the	Bureau, that sort of thing.	
17	information sir.	17 Q: By the way where did Major Conley, what	had
. 18	Q: Colonel Westcott learned it from Colonel	his command been prior to coming into?	
19	¿ Evanko.	19 A: I believe he was a Troop Commander.	
20	A: I believe that's where that information came	Q: Where?	
21	from.	21 A: I don't know what Troop it was.	
22	Q: Did you talk to Lt. Brown about this at all?	Q: Do you know whether it was the Troop wh	ere
23	A: Lt Brown? Brown may have been interviewed.	the Trooper was involved?	
24	Q: Why did you interview Brown?	24 A: No sir I don't.	
25	A: I don't know. I don't know if we did interview	Q: Did you ever check out and see?	
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to the best of my information in the office, of the time Deputy Commissioner of Administration who was not in. Captain Ober came into the office and it was myself, Major Williams and Captain Ober asked for a representative from PSTA to be present. That was afforded him. He was advised of the administrative

warnings or notification of inquiry and the interview began.

Q: Did he ask for a representative do you know to be present from the Pennsylvania State Troopers Association?

Yes sir I just said that.

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- I'm sorry did he ask for a specific person to be Q: there with him?
- A: I don't remember if he asked for a specific person or if he just asked for a representative.
- The reason I ask, and forgive my error, the reason o asked this is who picked the person who came in? That's what I'm asking you here.
- A: I have no idea. I know I didn't know the Trooper that was there so I know I didn't pick him.
- Q: Ok do you know if that person was picked by Captain Ober or how that person came to be the representative there?
 - A: No sir I don't.

- That may be included in his statement.
- Well do you know whether he came from the western part of the state or the eastern part?
 - He came from the western part of the state.
- Do you know whether he came from the southwest, the northwest regions?
 - A: I'm not sure.
 - Now who notified Captain Ober of the inquiry? O:
 - Specifically who told him?
 - Yes sir. O:

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- I don't know. I know I didn't contact him. A:
- O: How much notice did he have? How much time did he have?
 - A: I don't know.
- Q: Can you please go back and tell us everything you recommend, you recollect, I'm sorry, everything you recollect about that interview? And I mean everything from when it was first scheduled for you fellows, to what you did to go there, who took care of, everything that you remember about it up to the point where you started asking Captain Ober questions and then we're going to stop there. But go ahead and tell me what you know.
- Without any information in front of me all I can tell you is that the interview was scheduled at some point at department headquarters. The meeting was held,



Q:	Did you come at some point to learn of how
much not	ice or how much time that Captain Ober had?

A: I don't recall.

Q: Did you tape record that interview?

A: Yes sir.

Q: My compliments to you. If you can get the FBI to learn from you maybe we'll get, even do some more for law enforcement in America. Do you remember at what point the taped interview started? Did you, you know, have the discussion with Captain Ober and that sort of things or did you just start it when the question was asked.

A: I'd have to look at the report. I'm not exactly sure when it happened. I believe the recording begins by telling him that obviously as we do that it's being recorded. I'm not sure if his notification was given prior to that or subsequent to the tape being turned on.

Q: Did he have any discussion with you about why you were there, what a (you're court reporter is here) why, you know what this thing was about that or anything like that. Did he raise any questions or question it?

A: Not that I recall. He was told basically why we were there.

Q: Was he free to leave?

A:	I think there was probably some discussion as
to introdu	actions and that sort of thing.
Q:	But the formal part of things don't begin until
the repre	sentative gets there.
A:	That's correct.
Q:	And that's probably when the tape starts.
A:	That's my recollection.
Q:	Ok, now this was conducted, where was the
interview	with Captain Ober conducted and why if you
can tell m	ne?
A:	It was in the office of the Deputy
Commiss	ioner of Administration. That office was
available.	
Q:	That would be Mr. Coury, Colonel Coury. No
I'm sorry,	is it Coury?
A:	Yeah, at the time I guess it was.
Q:	Ok, is he retired by the way Mr. Coury?
A:	Yes.
Q:	And what's the date of his retirement if you
know?	
A:	Here you go, fourth of January.
Q:	Ok so it's conducted. Do you know why his
office was	chosen as a place to conduct an interview?

It was available.

Where is it from Colonel Evanko's office?

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Q: Ok and did he at some point indicate to you that this was not proper or ask what this was about or what it was being done for or anything like that?

A: Not to my recollection, no sir.

Q: But if so would that have been on the recorded portion?

A: I don't know.

Q: Was there any kind of prior, obviously you folks are part of a family there and obviously you're doing a job that certainly it's not a personal issue for you.

Right? You're doing a job.

A: That's correct.

Q: And trying to be as professional about it as you can. Correct? So when you get there, all I'm saying that when your discussions with Captain Ober start, as an attorney for example I take a caution before I start some interview or talk to anybody, or address you for example. I want to make sure that everything is running so your attorney is happy and she's protecting your rights and you know. All I'm saying when you come in there and you start talking to Captain Ober is there a pre-interview discussion if you recollect, or is it pretty much a case of when you walked in that door everything was on tape?

A:	Down a hallway beyond a number of
secretarie	s etc.

- Q: Now who was present with you? You had the state association representative, you had Captain Ober, yourself, Major Williams, Major Werts an who else was
 - A: No one to my knowledge.
 - Q: That recording was filed with the report?
 - A: Yes sir.
- Q: Do you have a copy of it?
 - A: Do I? No sir.
 - Q: Do you ever listen to it?
- A: I believe what I did was, if you're asking me if I sat and listened to the entire recording?
 - Q: Sure.
 - A: No.
 - Q: Did you review it, go through it or anything?
 - A: I think basically, I sort of read the report after it was transcribed, listening to the tape. Just to sit and listen to the tape? No.
 - Q: How long have you been a member of the Pennsylvania State Police?
 - A: Just over thirty-three years.
 - Q: What did Colonel Evanko indicate to you during his interview about what he had been told?



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A:	He indicated the meetings that took place and	1	Q:	Do you recollect becoming aware of the name
what info	ormation he got at those meetings.	2	Mark Ca	mpbell prior to the conclusion of your inquiry
Q:	Well let's talk about those meetings. We know	3	into the	Ober matter?
that ther	re were meetings ok? Now when you did the	4	A:	I was familiar with the name Mark Campbell
interview	with Colonel Evanko, did he indicate who was	5	prior to t	his ever starting.
present a	at those meetings?	6	Q:	In what connection, what regard?
A:	If he did it's in his statement sir. I don't recall.	7	A:	Basically in setting up some of the things that
Q:	Did he indicate if a gentleman by the name of	8	had to be	e done with respect to some of the assignments
Brown w	as in the meeting? One of the meetings?	9	we had v	which involved the governor and knowing that
A:	I don't recall sir.	10	Mr. Cam	pbell worked for the governor's office.
Q:	Did he ever indicate whether he had discussed	11 .	Q:	Ok, any connection between Mark Campbell
this mat	ter with the people in the governor's office?	12	and the i	inquiry into the Ober matter?
A:	I don't recall.	13	A:	I don't recall if Mr. Campbell's name was
Q:	Did he indicate, did he ever talk about a	14	mentione	ed specifically or not? There was some people in
gentlema	n by the name of Campbell, Mark Campbell?	15	the gover	mors office
A;	The name has been mentioned but I don't	16	Q:	We know that, we know that and I'm going to
know if t	he name was mentioned in association with this.	17	go there	next but right now specifically I want you to
Q:	Do you have a recollection whether that name	18	think bac	ck if you would please and see if you can put
was men	tioned during the process of your inquiry into	19	Mark Ca	mpbell into that context.
these ma	tters or afterwards?	20	A:	If he was mentioned sir during the course of
A:	I'm sorry I don't understand what your	21	an interv	riew it is in those reports.
question	is.	22	Q:	Did you tape all of the interviews?
Q:	Sure. You indicated a degree or some degree of	23	A:	Yes sir we did.
familiarit	y with the name Mark Campbell.	24	Q:	And you filed all of them with the report?
. A:	Yes.	25	A:	There is no report sir.
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Q:	I'm sorry. Your product, your finished			
A:	There's statements from every one that was			
interviewed.				
Q:	What do you call it by the way? I mean			
A:	It was an inquiry.			
Q:	You see a report to me is not a pejorative term			
so I don't mean it to mean something. What do you call				
it?				
A:	Basically there was an inquiry we went out, we			
taped recorded statements.				
Q:	What do you call the end products?			
A:	Verbatim and those statements were turned			
over to the Colonel.				
0.	But what is the what's it called I mean do you			

Q: But what is the, what's it called. I mean do you call it a work product? Do you call it a report? Do you call it just a Well there's no report or any writing if you will beyond the statement so it's a work product. Q: I understand. All right let's call it, so we don't have to waste time. Let's call it a work product. So report can be a misleading term. Let's call it and in this context

let call it work product. All right you turned, and in that

pork product you don't recollect if Mr. Campbell was

mentioned, any other governor's office personnel

mentioned in that work product.

- A: Not to my knowledge. Q:
 - And you're not saying Mr. Campbell is. You're just not certain. Is that fair to say?
 - A: That's correct.
 - Q: Is that fair to say?
 - That's correct. A:
 - Is there any of that work product that O: indicates that Colonel Evanko communicated with, got in touch with, met with, anything of that sort with the governor's office over this matter?
 - If Colonel Evanko mentioned that during his statement it's in that. It's in his statement.
 - Did you interview anybody from the governor's Q: office?
 - A: No sir I did not.
 - Now you say you turned this work product over to Colonel Evanko?
 - A: Yes sir.
 - Did you do that personally?
 - Both myself and Major Williams were present when the work product was turned over to Colonel Evanko?
- Q: Who else was present?
 - I don't know if anyone else was present. A:
 - Well was there a discussion at that point?

1	A: If there was it was short. Basically that we had			
2	completed the assignment and this was the product.			
3	Q: Did Colonel Evanko say anything or ask any			
4	questions?			
5	A: He thanked us for doing it and I don't really			
6	recall much of a discussion beyond that.			
7	Q: How long did it take you to do this gathering of			
8	interviews and investigations into the facts?			
9	A: I would say weeks at least.			
10	Q: Now did, was Colonel Westcott in the meeting			
11	when you turned the work product over?			
12	A: If he was sir I don't recall it. Don't recall him			
13	being there.			
14	Q: How about Colonel Coury?			
15	A: If he was there I don't recall it.			
16	Q: Did you here anything about the work product			
17	that you did after you turned the work product to Colonel			
18	Evanko?			
19	A: Beyond this suit being filed I don't believe I			
20	did.			
21	Q: Now who first told you that the suit was filed?			
22	Where did you learn that from?			
23	A: I don't remember that.			
24	Q: Do you remember discussing anything about			

1	A: No sir.
2	Q: Let's step out for a minute ok?
3	MS. LYDE: Do you want to go off camera?
4	MR. BAILEY: Yes just go off. Speak up, Crystal,
5	cause I can't pick you up on this.
6	MS. LYDE: 12:55, we'll take a short break.
7	MS. LYDE: We're back on.
8	MR, BAILEY: We're back on? Why don't you resume
9	and then I'll go. Go ahead and announce and then I'll go
10	ahead.
11	MS. LYDE: Ok it is now 1:02 PM, the deposition of
12	Major Werts is concluded. Thank you.
13	MR. BAILEY: I'd like to thank you. The videographer
14	is correct. We're done with the deposition at this time. Do

MS. REYNOLDS: I have nothing.

MR. BAILEY: Major I realize that these experiences

you have any?

are unpleasant. If I've cause any irritation or displeasure I want to apologize to you. I want to thank you. I want to thank you very much for you cooperation and your response to the questions here today. I appreciate them

very much as a professional. Thank you.

A: You're welcome sir.

MR. BAILEY: And we're done. That's it very much.

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1	IN THE UNITED S'	TATES DISTRICT COURT
2	F	OR THE
3	MIDDLE DISTRI	CT OF PENNSYLVANIA
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5		
6	DARRELL G. OBER	: 1: CV- 00-0084
7		:
8	Plaintiff	:
9	VS	:
10	PAUL EVANKO, M	ARK :
11	CAMBELL, THOMA	AS :
12	COURY, JOSEPH	:
13	WESTCOTT,	:
14	HAWTHORNE CON	
15	Defendant	ts :
16		
17		
18	DATE:	March 25, 2002.
19		
20	WITNESS:	Robert Hickes
21		
22	PLACE:	2629 Market Place
23		Harrisburg, Pennsylvania
24		20
25	APPEARANCE	
26		Syndi Guido
27		Barbara Reynolds
28		Joanna Reynolds 1800 Elmerton Ave.
29		
30 31		Harrisburg, PA 17101
31 32		Don Bailey
32 33		4311 N. 6 th Street
33 34		Harrisburg, PA 17110
34 35		riaitisbuig, rA 1/110

Coury is here at present, pursuant to our

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continuing offer. I believe I sent you a letter to 2

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- this affect on Friday to make Colonel Coury 3
- 4 available for what you stated on March the 12th
- was another hour of deposition. That would date
- of which Colonel Coury started to my recollection 6
- 7 of that 3:15 afternoon. We wish to go straight
- through, you had other commitments. You left at 8
- 9 approximately, I think we adjourned at
- approximately 10:05, you indicated that maybe 10
- you need another hour of Lieutenant Colonel 11
- 12 Coury and at one point, it indicated that you
- would be amendable to completing Colonel 13
- Coury's deposition to my recollection today. 14
- Hearing nothing from you on the letter from 15
- Friday. Colonel Coury is available here, this 16
- 17 morning. Along with Colonel Hickes, of course,
- and we are willing to exceed one hour of 18
- 19 deposition of Colonel Hickes in order to complete
- Colonel Coury's deposition. 20
- 21 BAILEY: Counsel, I'm use to self-serving
- 22 letters with all do respect to you from defense
- 23 attorneys and I am also use to posturing and I am
- 24 also use to various unsundry, manipulations of the
- discovery process for strategic purposes and I will

- SOLOMAN: My name is Michael
- 2 Solomon. I am employed by Sergeant's Court
- Reporting Services. Today is March 25, 2002. 3
- The time is approximately 9:25 a.m. This
- deposition is taken at 2629 Market Place,
- Harrisburg, Pennsylvania. Case No. 1CV-01-008.
- Daryl G. Ober, Plaintiff versus Paul Evanko,
- Mark Campbell, Thomas Coury, Joseph Westcott,
- Hawthorne Conley Defendant. The name of the 9
- witness is Robert Hickes. For the attorney 10
- 11 present, state your name and who you represent.
- 12 RESPONSE: Cindy Guido, Defendants.
- 13 Barbara Christie Chief Counsel, Pennsylvania
- State Police, Joanna Reynolds, Assistant Counsel, 14
- 15 Pennsylvania State Police, Defendants. Don
- Bailey, I represent the Plaintiff, Daryl G. Ober, 16
- 4311 North Sixth Street, Harrisburg, 17
- Pennsylvania, 17110. (717) 221-9500. 18
- 19 SOLOMAN: The Court Reporter may
- now finish the oath. 20
- 21 COURT REPORTER: Right before we
- 22 get to that Barbara the usual stipulations for the
- 23 record.

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- COUNSEL: 24 Yes, counsel, I just wanted
- to note for the record that Lieutenant Colonel 25

- respond as follows. I may need Lieutenant
- Colonel Coury for more than an hour, \bar{I} am really
- not sure. And if so, I will take the appropriate
- amount of time or I certainly will procure it. I did
- have a written response coming to the
- communications that you faxed on Friday, I am
- not prepare to do Lieutenant Colonel Coury today;
- we have for some time as you know, have had
- Lieutenant Colonel Robert C. Hickes scheduled
- 10 and I will work with you to the extent that I can
- 11 on getting the continuing deposition of Colonel
- Coury scheduled. We've stated our positions. I 12
- 13 am not prepared to do Mr. Coury right now and I
- 14 would suggest that we move along.
- 15 COUNSEL: Okay counsel I just wanted
- 16 to note our continuing goal for the record based
- upon your estimate on Friday that you needed 17
- 18 Colonel Coury another hour.
- 19 BAILEY: Well, it was...
- 20 COUNSEL: We have been here; we're
- 21 willing to offer another hour...
- 22 BAILEY: Counsel, you're wasting.
- 23 COUNSEL: And Colonel Hickes, if I
- 24 may finish, is gracious enough to - Colonel
- 25 Coury for an hour of that deposition.

- BAILEY: There's no...
- 2 COUNSEL: I just want the record to
- 3 show that pursuant to what we thought was
- 4 understanding, we do have Colonel Coury here.
- 5 But, I hear your response.
- 6 BAILEY: I think it's wonderful that you
- 7 have Lieutenant Colonel Coury here. I always
- 8 like to see him and Colonel Coury I am happy to
- 9 see you here today. I wondering now if we can
- 10 begin with Mr. Hickes, if you don't mind.
- 11 COURT REPORTER: Sir, I am going
- 12 to swear you in. Raise your right hand please. Do
- 13 you swear that the testimony you are about to give
- 14 will be the truth, the whole truth and nothing but
- 15 the truth?
- 16 HICKES: Yes, I do.
- 17 Q: Thank you. Lieutenant Colonel, would
- 18 you state your name for the record and your
- 19 current position with the State Police.
- 20 A: My name is Robert Claire Hickes. I
- 21 am Deputy Commissioner of Staff at
- 22 Pennsylvania State Police.
- 23 Q: And is your rank Lieutenant Colonel?
- 24 A: Yes it is.

- 1 a Lieutenant Colonel and then you were a Major,
- 2 is that right? And then a Lieutenant Colonel
- 3 again?
- 4 A: Yes.
- 5 Q: When were you a Lieutenant Colonel
- 6 previously?
- 7 A: I was a Lieutenant Colonel from 1991.
- 8 I was in an acting capacity from January to April
- 9 and then I was appointed by Governor Casey to be
- 10 Lieutenant Colonel for a Deputy Commissioner of
- 11 Operations from April of 1991 until December of
- 12 1994. At the end of the administration I requested
- 13 the Commissioner to refer to my previous rank,
- 14 which was Major and then I was Acting Deputy
- 15 Commissioner of Operations until a new Deputy
- 16 Commissioner appointed and I believe that was
- 17 February of 1995.
- 18 Q: Is that because of the. At the level of
- 19 man staff being the Deputy Commissioner, those
- 20 are pretty much gubernatorial decisions?
- 21 A: Yes, a Deputy Commissioner is
- 22 appointed by the Governor.
- 23 Q: So, as governor's change; that would
- 24 not be any reflection on you, it would just be that

Q: How long have you been appointed to

- 2 your current position?
- A: I was appointed to my current position
- 4 in October of 1998, I believe.
 - Q: Do you remember the exact date?
- 6 A: The first or the third, I am not
- 7 positive?

14

- 8 Q: The first or the third of October?
- 9 A: Correct.
- 10 Q: And you said that you're a Deputy
- 11 Commissioner. Are all of the Lieutenant Colonels
- 12 in the State Police Deputy Commissioners?
- 13 A: Yes they are.
 - Q: Can you be a Deputy Commissioner
- 15 and not be a Lieutenant Colonel?
- 16 A: I don't know. Obviously, things
- 17 change, but during my tenure, all Deputy
- 18 Commissioners have been Colonels.
- 19 Q: I just wondered if the title goes hand in
- 20 hand with being a Deputy Commissioner because,
- 21 if I am not mistaken, you were a Deputy
- 22 Commissioner before?
- 23 A: Yes I was.
- 4 Q: So, I am just trying to get the
- 25 explanation of the gap of that one time your were

6

- 1 as a governor changes, they change the Deputy
- 2 Commissioner sometimes?
- 3 A: They sometimes do. The reason for
- 4 dropping back is more of a benefits issue, up to
- 5 and including the rank of Major within the State
- 6 Police as a member of PSA Bargaining Unit and
- 7 retirement from Unit affects your benefits. If
- 8 you retire from the Bargaining Unit or not.
 - Q: I see. When you were a Deputy
- 10 Commissioner previously, I think you said
- 11 starting in 1991? Was that right? I didn't write
- 12 that down?

9

- 13 A: Yes.
- 14 Q: You said it was Operations?
- 15 A: Yes.
- 16 Q: What does the Deputy Commissioner
- 17 of Operations do?
- 18 A: He has command responsibility for the
- 19 field forces of the Pennsylvania State Police,
- 20 which is the troops and area commanders as well
- 21 as Bureaus for Liquor Enforcement, Criminal
- 22 Investigation, Patrol and Drug Law Enforcement.
- 23 Currently he also has Bureau of Emergency and
- 24 Special Operations also.
- Q: Does the...

- A: I did not while I was there.
- 2 Q: You did not have Bureau of
- 3 Emergency?
- 4 A: No.
- 5 Q: Did you have any involvement with
- 6 the State Police Academy in your capacity as the
- 7 Deputy Commissioner of Operations?
 - A: No, I did not.
- 9 Q: Have you ever had any involvement
- 10 with the; did your responsibilities ever relate to
- 11 the State Police Academy?
- 12 A: Yes, they have.
- 13 Q: When was that?
- 14 A: 1987 to very early of 1998.
- 15 Q: What was your role?
- 16 A: I was the Director of the Bureau of
- 17 Training and Education.
- 18 Q: The Director of the Bureau of Training
- 19 and Education, who do they report to?
- 20 A: Currently, they report to Deputy
- 21 Commissioner of Administration.
- 22 Q: Was that case back when you were a
- 23 Deputy Commissioner as well?
- 24 A: In 1987, I don't believe we had a
- 25 Deputy Commissioner of Administration yet.
 - 9
- 1 A: Our responsibilities included the
- 2 Bureau's staff services, the Bureau of Forensic
- 3 Services, Bureau of Research and Development,
- 4 Bureau of Technology Services and the Bureau of
- 5 Records and Identification. The staff function
- 6 within the Pennsylvania State Police are those
- 7 entities that support the field administrative
- 8 functions in the various capacities, whether it's
- 9 facilities, fleet management, the fiscal
- 10 responsibilities, maintenance of the records, those
- 11 kinds of things.
- 12 Q: What does the Deputy Commissioner
- 13 for Operations do?
- 14 A: He is responsible for field forces of the
- 15 Pennsylvania State Police as well as the Bureaus
- 16 of Control, Criminal Investigation, Liquor
- 17 Enforcement, Drug Law Enforcement, Emergency
- 18 · and Special Operations.
- 19 Q: The Bureau of Professional
- 20 Responsibility, where does that fit in the scheme
- 21 of things?
- 22 A: The personnel related issues fall under
- 23 the Deputy Commissioner of Administration.
- 24 That would be the Bureau of Professional
- 25 Responsibility, the Bureau of Training and

- 1 That organization change came a little later and at
- 2 that time they would report to the Chief of Staff.
- 3 Q: When you were the Deputy
- 4 Commissioner the first time; were you ever a
- 5 Deputy Commissioner of Administration?
- A: No, I was not.
- Q: Are you the Deputy Commissioner of
- 8 Administration now?
 - A: No, I am the Deputy Commissioner of
- 10 Staff

g

14

17

- 11 Q: Have you ever been Deputy
- 12 Commissioner of Administration?
- 13 A: No I have not.
 - Q: Have you ever been Deputy
- 15 Commissioner of Operations?
- 16 A: Yes I have.
 - O: And when was that?
- 18 A: 1991 to 1995.
- 19 Q: Since you have been Deputy
- 20 Commissioner since October of 1998, have you
- 21 always been the Deputy Commissioner of Staff?
- 22 A: Yes.
- 23 Q: What does a Deputy Commissioner of
- 24 staff do?

10

- 1 Education, the Bureau of Human Resources and
- 2 the Office . Don't quote me on that one; I am
- 3 not sure whether the office of Equal Employment
- 4 falls under the Deputy of Administrator or the
- 5 Director of Operations I would have to look at a
- 6 table.
- 7 Q: In October of 1998, who was the
- 8 Deputy Commissioner of Administration?
- 9 A: In October of 1998, Lieutenant Coury
- 10 was the Deputy Commissioner of Administration.
- 11 Q: Who's the current Deputy
- 12 Commissioner of Administration?
- 13 A: Lieutenant Colonel Hawthorne
- 14 Conley.
- 15 Q: How long have you known the
- 16 plaintiff, Captain Ober?
- 17 A: I've been aware of Captain Ober, I
- 18 believe, since he was a Corporal on the job. He
- 19 was assigned to the Bureau of Research and
- 20 Development. I believe.
 - Q: If you said the year, I didn't catch it.
- 22 A: I have no idea what the year was. I
- 23 would have to be speculating at this point that it
 - would be in the 1980, eight eighty, nine, ninety
- 25 time frame.

The late eighties, early nineties?

A: Yeah.

Can you describe that relationship? In 3 Q:

other words, is it a personal relationship, a 4

professional relationship or some of both? 5

It's a professional relationship.

I think you said the Bureau of

Technology Services falls under the Deputy 8

Commissioner of Staff, is that correct? 9

> Yes it does. A:

11 Q: And in that capacity, would you be

familiar with the IIMS Project? 12

13 A: Yes I am.

> 0: What is the IIMS Project? What does

it stand for? 15

10

14

20

IIMS is Incident Information 16 A:

Management System. 17

18 Will you explain what that is?

19 Basically just explain the project for me?

A: The department had a strategic plan

prepared by KPMG to view our processes and 21

22 determine a course for solving a lot of the

business processes for the department. IIMS is 23

the result of that plan, which would modernize 24

and streamline the business processes of the

- You said that this sprung from a strategic plan that was prepared by KPMG? 2
- 3 A: Yes.
- When was that plan prepared?
- I believe that they were on board with
- 6 the department in 1995. I am not certain when
- they finished their strategic plan? It ...

Do you know what prompted having 8

9 the strategic plan done?

Yeah, the evaluation of where we were 10

as a department and how we use technology

because both Commissioner Evanko and the 12

previous Commissioner Waltz believed that there 13

were more efficient and effective ways to do that. 14

Had this analysis that was done on the 15

department's process etc.; had that started under 16

Commissioner Waltz or did that start new with the 17

current administration? 18

19 I believe, Commissioner Waltz started

or at least had gone out and contracted with 20

KPMG and the vendor was selected, but he left 21

shortly after the vendor was selected. I don't 22

know whether they had done any work or not? 23

24 Now this IIMS Project. Is it part of a

larger project?

department as it deals with a patrol trooper and

the IIMS will centralize our dispatch function.

Put a records management system in place. Put

mobile data terminals in the patrol cars for

troopers and in essence, takes the aspect of

investigation evidence information gathering and

by technology and solve the problems so that

troopers can work more efficiently.

Q: Can you give me an example of the

10 kind of problem that might be solved through the

IIMS? 11

 A: Currently, in a paper based system, if a 12

13 trooper investigates an incident, he may be

required to fill out multiple reports for that. An

example might be a car theft. That he has a 15

vehicle report. He may have a vehicle recovery 16

report, filed an incident report. He'll have 17

evidence; IIMS will allow him to do the 18

investigation, enter the information one time into 19

the records management system and then the 20

21 records management system will populate the

various reports so that he doesn't have to have 22

duplicate entries multiple times in continuing to 23

do his work.

14

IIMS is the larger project. It's got a

Can you identify some of those subsets Q:

for me?

number of subsets.

A subset would be the mobile data

6 computing that puts terminals in patrol cars for

the officers to use. A subset would be a records

8 management system. A subset would be the

centralization of the dispatch function and with 9

that would come computerized dispatch and 10

11 automatic vehicle locator and technologies to go

with considated -. 12

So those are all basically smaller 13

A: Yes.

14

15

21

23

The IIMS Project; is that still ongoing Q: 16

projects within a larger project called IIMS?

or is it complete? 17

A: It's still ongoing. 18

19 Do you have an estimated time that it

20 will be actually done? The whole thing?

The phase II contracting is underway

right now. Part of the phase II contracting is to 22

have the vendor provide their reasonable effort for when this would be completely finished. At the

- outside, I would say that it would be about 42
- 2 months, but it should be shorter than that.
- 3 Q: For phase II?
- 4 A: To be completed, yes.
- 5 Q: And how many phases will there be
- 6 total into the project?
- A: Two.
- 8 Q: Two phases. So, what was Phase I?
- 9 A: Phase I was the detailed design.
- 10 Q: Can you elaborate for me? I'm sort of
- 11 technologically impaired?
- 12 A: The detailed design, Lock Key Martin
- 13 was the successful vendor on the IIMS contract.
- 14 Phase I provided that they and their consortium
- 15 would do a detailed design of how the various
- 16 components would be designed and then
- 17 integrated and that's it.
- 18 Q: The various components, are you
- 19 talking about those different, smaller projects we
- 20 were talking about?
- 21 A: Yes.
- 22 Q: And so for the whole project to be
- 23 completed through Phase II will be at least three
- 24 or four more years from now?
- 25 A: Possibly three or four more years.
 - 17
- 1 which bidder submits the most comprehensive
- 2 beneficial package for the Commonwealth.
- Q: So, the end result of that is that portion
- 4 of the program would be that a vendor would be
- 5 selected to be the system's integrator?
- 6 A: Correct.
- 7 Q: And that I think you said was Lock
- 8 Key Part?
- 9 A: Correct.
- 10 Q: And Captain Ober's assignment to the
- 11 IIMS Project was solely to accomplish that phase,
- 12 selection system integration?
- 13 A: Correct.
- 14 Q: Do you know how he was chosen for
- 15 that role?
- 16 A: The Commissioner chose him for that
- 17 role.
- 18 Q: Did you have any input in that at all?
- 19 A: The Commissioner asked whether I
- 20 was agreeable to Captain Ober being the project
- 21 team leader on the RFQ. I had right of denial, I
- 22 suppose.
- 23 Q: In his lawsuit, Captain Ober has
- 24 indicated this is a hundred million dollar project
- 25 that has suffered greatly and caused the taxpayers

- 1 Q: During these two phases of the project,
- 2 had there been a lot of different members of the
- 3 State Police Organization that have rotated in and
- 4 out of assisting with the project?
 - A: There has been some rotation in and
- 6 out of the project, yes.
- Q: And as the project is being completed,
- will that rotation, in and out continue to occur?
- 9 A: It's possible that there could be
- 10 additional locations in and out.
 - Q: At one point, I believe, Captain Ober,
- 12 since it's part of this lawsuit; Captain Ober was
- 13 part of the IIMS project. Can you explain what
- 14 his role was in the project?
- 15 A: His role was the Team Leader for the
- 16 request for qualified quotation for the vendors that
- 17 were under evaluation to be the systems
- 18 integrator.

- 19 Q: Request for qualified?
- 20 A: RFQC contractor. Request for
- 21 qualified contractor.
- 22 Q: Okay. Can you explain what that
- 23 process is?
- 24 A: That's a rather in depth evaluation of
- 25 the corporate bidders for the contract to determine
 - 18
 - a lot more money because he was transferred into
- 2 another position. That particular portion, the
- 3 system integrator portion of the project; that part
- 4 was not a hundred million dollar project was it?
- 5 A: The overall project is going cost over a
- 6 hundred million dollars. Lock Key Martin and the
- 7 system's integrator have the responsibility for
- system s integrator have the responsibility to
- 8 bringing that all together, so the nature of the
- 9 procurement in this particular instance isn't that
- 10 the Commonwealth goes out and buys the various
- 11 parts and says to Lock Key Martin, here it is, put
- 12 it together. But, that we contract with Lock Key
- 13 Martin, who is then the prime contractor to
- 14 assemble the various parts that we have identified
- 15 that need to be in this, purchase them and
- 16 assemble it. So, in a large way, Lock Key Martin
- 17 is involved in over a hundred million dollars
- 18 because they become the prime.
- 19 Q: But, Captain Ober's team put together
- 20 the Phase I design contract and that totaled 8.8
- 21 Million Dollars. Is that right?
- 22 A: That's correct.

23

- Q: Did Captain Ober fulfill his
- 24 assignment with the IIMS Project?
 - A: Yes he did.

- Q: And in fact, he voted on the final selection of took Key Martin. Is that right?
- 3 A: Yes he did.
- 4 Q: What role does Major Waugh play in
- 5 the IIMS Project. His name has come up a bunch,
- 6 so I thought you could explain that for me.
- 7 A: Major was the Director of
- 8 Technology Services and this project, because it's
- 9 a technology project is being administered and led
- 10 out of the Bureau of Technology Services. So, he
- 11 has oversight responsibility for the project
- 12 generally, and for members of the project teams,
- 13 specifically.
- 14 Q: So, the project team leaders, do they
- 15 report to Major , directly?
- 16 A: Yes.
- 17 Q: And then Major would report to you?
- 18 A: Yes.
- 19 Q: Ron Wilt, what role does he play in the
- 20 IIMS Project?
- 21 A: He's currently the project manager for
- 22 IIMS.
- 23 Q: What does the project manager do?
- 24 A: Have you ever been project? I' m
- 25 sorry.

- 1 Q: Do you know when Lieutenant Ackens
- 2 was brought into tech services?
- A: I don't recall.
- 4 Q: Do you know whether that was before
- 5 or after Captain Ober was there?
- 6 A: I believe it would have after, but I'm
- 7 again, not certain.
- 8 Q: And Lieutenant Ackens, he has a
- 9 strong technological background, is that right?
- 10 A: He had been involved in the computer
- 11 crimes unit before and so, he does know
- 12 technology.
- 13 Q: Are you aware of any amounts of
- 14 money that; in other words, Captain Ober here has
- 15 said that it cost the taxpayers lots of money and
- 16 delay and expense because he was taken off the
- 17 project. Are you aware of any expense to the
- 18 taxpayers, etc., that has come about because
- 19 Captain Ober has not been able to be on the
- 20 project?
- 21 A: I'm not aware of any direct expense,
- 22 no.
- 23 Q: And has the projects continued to
- 24 move forward successfully?
- 25 A: Yes.

- Q: No I haven't that's why I'm asking
- 2 you.
- 3 A: The project manager has
- 4 responsibilities for all aspects of the project from
- 5 scheduling to brisk mitigation to evaluating what
- 6 the Commonwealth wants in determining that we
- 7 a: get what we wanted; b: get what we paid for;
- 8 he has responsibilities, liaison responsibilities
- 9 with the various vendors; he's the point of contact
- 10 for vendors, so he's literally the hub of the wheel
- 11 on a project.
- 12 Q: Is he a civilian or a member of the
- 13 State Police?
- 14 A: He's a civilian employee with the State
- 15 Police.

19

- 16 Q: Lieutenant Brian Ackens. Is he
- 17 involved in the IIMS project?
- 18 A: Yes.
 - Q: And what role does he play?
- 20 A: I am not certain exactly what
- 21 Lieutenant Ackens title is. His responsibilities are
- 22 to ensure that the ended product with IIMS
- 23 satisfies the needs of the enlisted members of the
- 24 Pennsylvania State Police.

22

- Q: And your satisfied with the direction it
- 2 is going and the work that is being completed,
- 3 etc.?
- 4 A: Yes I am.
- 5 Q: Now as far as the; I want to talk to you
- 6 about. Captain Ober has told us in the past that he
- 7 had applied for a position as the Legislative
- 8 Liaison when the former Legislative Liaison had
- 9 left. I am trying to remember that gentleman's
- 10 name. Um Captain Morris, or something?
- 11 BAILEY: Colonel Hickes before you
- 12 respond, Cindy, perhaps we should agree that we
- 13 employed to stipulations in the past as to
- 14 objections being deferred except to the form of
- 15 the question to time of trial. Do you agree to that
- 16 stipulation?

- COUNSEL: Yes.
- 18 BAILEY: Okay from time to time, Colonel,
- 19 I may object. Unless I state additional
- 20 information on the record, I may say to you
- 21 "objection you may continue", okay. By the way
- 22 are you representing him at this deposition or is he
- 23 here as a Freehlancer?
- 24 COUNSEL: I mean we represent the
- 25 whole command staff so.

BAILEY	: Well, I assume you consulted
BAILEY	: Well, I assume you consulted

- with him and talked with him and that yourepresent him as a witness here today and that's
- 4 all right. I just object; note an objection to the last
- 5 question, but you may respond sir.
- 6 Q: Actually since then, Captain Brown
- 7 was kind enough to give me the name I was
- 8 looking for, which was Major Richard Morris.
- 9 Do you remember when he was legislative
- 10 liaison?
- 11 A: I remember when he was legislative
- 12 liaison; I think he's been retired two or three
- 13 years?
- 14 Q: And did you know that Captain Ober
- 15 applied for the position as legislative liaison when
- 16 Major Morris left?
- 17 A: Yes I did.
- 18 Q: Can you tell me what you know about
- 19 Captain Ober's application for that position?
- 20 A: I believe at the time he was still within
- 21 the Bureau of Technology Services and he
- 22 submitted his application through channels to the
- 23 commissioner.
- 24 Q: Would you have been one of those
- 25 channels?

- 1 Q: But we know that the story has been
 - established that Captain Oger told you about the
- 3 FBIs investigation and plasibe corruption the state
- 4 police have had on October 5 1998. Do you recall
- 5 that?
- 6 A.I don't recall that it was into the state
- 7 police academy. My recollection is that it was into
- 8 the ability to have, to get hired by the state police
- 9 and circumvent the hiring process.
- 10 Q. How do you get hired by the state police?
- A. My best, I've got to tell you my best
- 12 notion of this and if I am wrong in any way it's
- 13 because I am not in human resources but one
- 14 apply to Pennsylvania state police if there
- 15 between the requist age and are a resident of PA
- and they have the resigit education then there is an
- 17 examination that is given and are places the
- 18 candidates on a list of eligible, once they are
- 19 placed on the list of eligible they are require to
- 20 subsequently undergo a polygraph examination,
- 21 background investigation, probly there is a
- 22 phsyreactric examination, but don't quote me on
- 23 that one and they continue through this process
- until the list gets dwindled down then human
 recourses simply goes down the list and picks the

- A: Yes, it would have gone to, I believe to
- 2 Major Waugh and then to me.
 - Q: From Major Waugh to you for
- 4 approval or disapproval? What would your role
- 5 be?
- A: The legislative liaison works, I believe
- 7 it reports to the commissioner so, my role would
- 8 have been to pass it on.
- 9 Q: Did you recommend one way or the
- 10 other whether Captain Ober would be good for
- 11 that spot?

14

23

- 12 A: I don't recall whether I can put an
- 13 endorsement on it or not?
 - Q: When you say put an endorsement,
- 15 what does that mean?
- 16 A: Within the State Police
- 17 correspondence process an endorsement on
- 18 correspondence is your opinion of it and/or just a
- 19 note of transmittal. I don't know whether I
- 20 endorsed that one or not?
- 21 Q: But, you would have been able to
- 22 endorse it if you wanted to?
 - A: Right,
- 24 Q: Would that be your choice?
- 25 A: Yes, I could have if I wanted to.

26

- top candidates and invites them to the police
- 2 academy where they begin training. I believe that
- 3 is the way it is currently.
- 4 Q: In your understanding of the FBI's
- 5 investigation was that it was looking into what
- 6 part of that process?
- 7 A: That...My understanding was that they
- 8 had information that one could circumvent that
- 9 process and or an amount of money if you and at
- 10 the time when I believe they gave the exam they
- 11 were banding it in other words there was a band A
- 12 of the most eligible people and a band B of the
- 13 next group eligible. I think initially that if you
- 14 paid money you could move from band B to band
- 15 A and if at any where through process you failed
- 16 one of these, either the physical testing or the
- 17 polygraph examination money could be paid to
- 18 get that made to look like a good test.
- 19 Q: Who figures out the banding?
- 20 A: It's all done in the bureau of the human
- 21 resources. Actually it was the bureau of personnel
- 22 at the time. Test contractors.
 - Q. Who's in charge of the bureau of Human
- 24 resources

23

25 A: That would be currently Linda Bonnie

1	Q: Is she a civilian employee?
2	A: Yes she is
3	Q: Was she Do you know if she was in
4	charge of it back in Oct. of 98?
5	A: I am not certain Mr. Wayne Dowling
6	retired at some point in time and I am not sure
7	who and when.
8	Q: Rings a bell for you. And he was a
9	civilian employee also?
10	A: Yes he was.
11	Q: The director of personnel?
12	A: Correct.
13	Q: Who would he report to?
14	A: He would have reported, earlier in his 10
15	years to the Chief of Staff then after the
16	reorganization to Deputy Commissioner of
17	administration.
18	Q: Who was the chief of staff?
19	A: Well that pre dates all of this and that
20	was Colonel Dilarcphie and then upon his
21	retirement I believe Frank Lynch was the Chief of
22	staff for a while.
23	Q: You said that there was not a Chief of
24	staff at the time that these events occurred at this
25	time in October of 98.

25	time in October of 98.
	29
1	Q: And do you know whether or not the
2	active commissioner gets involved in that?
3	A: I don't know.
4	Q: When Captain Ober talked to you about
5	the FBI's investigation on October 5 1998 you
6	had just started as Deputy commissioner staff is
7	that right?
8	A: Yes I had.
9	Q: Been there or two?
10	A: What day of the week is the fifth?
11	Q: I believe it's a Monday.
12	A: My first day I think, I don't have the
13	dates but I think I was notified of my appointment
14	on a Friday.
15	Q: Do you recall Commissioner I mean
16	Captain Ober talking to you about Do you
17	recall when he first talked to you about the FBI
18	investigation?
19	A: I recall him telling me about it yes.
20	Q: Can you tell us about that conversation
21	that you had with him?
22	A: I'm not certain exactly where it took
23	place it was in department headquarters I believe
24	it was the third floor it may had been a corridor
25	conversation.
	21

1	A: During Colonel Sharrp administration he
2	did a reorganization of the department witch
3	created the Deputy commissioner of
4	administration and redistributed the
5	responsibilities.
6	Q. Would that have gone back as far as lets
7	back up to say 1994 in the Walp administration.
8	Had it already been changed buy then?
9	A: It had been changed by then yes.
10	Q. And in the Walp administration who
11	would be director of personal would have reported
12	to?
13	A. The Deputy of commissioner of
14	Administration.
15	Q: Do you know what role if any the Deputy
16	Commissioner of Administration plays in that
17	process that you just described?
18	A: I don't know.
19	Q: Do you know what role if any the Deputy
20	Commissioner of operations would play in that
21	process?
22	A: I don't know.
23	Q: How about, does the Governers office
24	have anything to do with that? Process?
25	A: Not that I know of
	30

Q: But it was face to face? 2 A: Yes it was face to face . Captain Ober approached me about an issue that he had had concerning the FBI contacting him relative to this information that one could buy ones way onto the Pennsylvania Sate police. He indicated to me that the FBI had contacted him in confidence and had asked him not to reveal this information to anyone else. That this was a political corruption investigation that they had been investigating 10 previously and that this information had been a 11 segment of that that they had kind of allowed to lay dormant for a while. And they were tying up loose ends, if you will. And they wanted to 15 continue this investigation. And the, that the, had need information concerning the process of how 16 17 one does get hired onto the Pennsylvania State Police. And that they did not know, obviously 18 19 who might be involved in this. I believe this

may have go to the Governors office.

information was that they the term colonel had

been used and that there were suspicions that it

20 21

22

A: It has changed over the years how one gets accepted to the Pennsylvania State Police. 2 Q: At that time did he mention anything to 3 you about Trouper Stanton?

A: I don't believe so.

Q: I think you said backing up you 6 mentioned that he said that the FBI said not to tell 7 anybody else about it. Did you have any

discussion with him about why he was not telling his major the head of Bureau profession was your

10 responsibility? 11 A: He indicated from me that he was in a 12 quandary about what to do. Who to tell on this. 13 That it was information that he felt was serious enough that he needed to commutate it to 15 somebody but really wasn't sure based on the fact 16

the term Colonel had been used who he would be 17 able to talk to and he decided that I was the person 18

that he should tell because I had not been a 19

Colonel and other than in the previous 20

administration hadn't been there in a number of 21

years and certainly wasn't in a position to 22

influence the hiring process.

33

Mr. Bailey: No I 1

3

Counsel: Your objection is noted he can finish his Question after he has answered mine.

Mr. Bailey: No... No... No.. Look you

interrupted he was answering a question that was

highly improper. I want to hear the end of that. 6

Council: its noted Mr. Bailey 7

Mr. Bailey: Noted my behind ma'am. 8

9 Council: It's noted

Mr. Bailey: No it's not noted and I am not 10

going to stop objecting He was answering a 11

question, a very very important one. He was in the 12

middle of that question you interrupted him with 13

14 another question. I am respectfully requesting that

you allow him to answer that question in fact I'd 15

16 like to have it read back that's an extremely

material question in this law suit. Are you going 17

to let it be read back? 18

19 Council: No not if you are not going to let him answer my question. 20

21 Mr. Bailey: Let me put something on the record right now. 22

Council: Go ahead 23

Mr. Bailey: You interrupt this witness one 24 more time and prevent him from answering a

Q: What did he tell you about what the FBI said about whether he could tell anybody else 2 3 within the department?

strictest of confidence and that he had responded to the FBI that he needed to tell someone and that they had indicated that they would let that up to

A: He said that the FBI had asked for the

him to do but that it was a very sensitive matter

and that he was to tell no one about this.

10

22

Q: And your response to him was?

A: I asked him whether they were asking us 11 to perform any investigative task or whether they 12 were just seeking background information. He 13

indicated that it was background information only. 14

We discussed very briefly the remoteness of this 15

probably being true. That it was probably not true 16

17 because of the number of individuals that would

have to be involved in it. Then we kind of 18

19

be like 5 or 6 if they were the right individuals.

Q: Who were the 5 or 6? 20

21

Mr. Bailey: Please he hadn't even finished I

23 would like to hear the end of his question.

Counsel: Can you clarify for me who the 24

25 five or six are?

34

material question I am taking my client and were

Council: Okay.

Mr. Bailey: Now you are not allowed to interrupt a response to a question. That was an

leaving we will go to the judge.

extremely important one I want him to be allowed

to finish. I'm going to let you get away with it this

time. I respectfully request, I am asking that you

do not do that again. You will disrupt this

deposition and your going to destroy the flow of 10

information. It sends messages, it's wrong. 11

Council: If you would just ...

13 Mr. Bailey: He was answering... He was

answering.. No you're not allowed... no ma'am

I'm not allowed to do it either. 15

16 Council: It is up to you if you choose to

12

17

18 Mr. Bailey; I am telling you I am going to

19 leave this deposition if you do that again.

Council: well that is your choice. Lutenant 20

Colonel. I have kind of totally lost track now of 21

what you were responding to but I believe you 22

23 were explaining that you and Captain Ober had at

first thought it was a bunch of people and than

that would have to be involved and then narrowed

- it down to if they were the right people maybe
- five or six people and then perhaps you were 2
- going to say something else. I don't know. But 3
- could you first tell me the five or six people that
- you narrowed it down to and then if there was
- something else you wanted to add feel Freel to do 6
- that. 7
- Lieutenant Colonel: Technically in my 8
- opinion at the time personal bureau personnel 9
- cadet processing unit. And that would have been 10
- Rose Polic and Julie Farthing. It could be 11
- 12 individuals who, I don't know if anyone looks at
- 13 the list after they say these are the cadets that are
- on it and these are the people who should start the 14
- academy and these are the people we process. I 15
- am not sure where the oversight is. So obviously 16
- 17 those two people in the cadet processing unit if
- there is oversight then your director of personnel 18
- 19 clearly could be someone who could be involved.
- 20 And then obviously someone ranked higher than
- that would influence to have them manipulate 21
- something. Could be someone that could do this. 22
- 23 That could be the Commissioner or any of the
- Deputies or Governors office. 24

- information to anyone till they have completed
- 2 there investigation.
- Mr. Bailey: Thank you sir. 3
- Counsel: When you were listing the five or 4
- six people, the people you thought might be able 5
- to be involved in the changing the banding etc... 6
- Would the Director of the Bureau of Professional
- Responsibility have any involvement in that
- 9 process?

10

22

- Lieutenant Colonel: Probably not.
- 11 Q: The Director of the Bureau of
- Professional Responsibility was then Major 12
- Conley? 13
- 14 A: He had just gotten promoted, yes.
- Q: And he would have been the person that 15
- was immediate supervisor of Captain Ober. 16
- 17 A: That's correct.
- 18 Q: Now you mentioned in you response that
- 19 you ordered Caption Ober not to tell anybody else
- 20 about it. And then you mentioned that it was
- 21 because he had said that he had sworn to
- confidentiality. Was it your understanding from
- Captain Ober that the FBI had been explicate in 23
- requesting that confidentiality? 24
- 25 A: Yes, It was.

Learner Churchen

Q: And was there something else you wanted to add to that? 2 A: I recall that, and this was my recollection, I recall that was answering you had asked what Captain Ober and I had discussed and why he might not have gone to Lieutenant Colonel Conley actually Major Conley now. I don't know but, he did ask me what do I do I've been sworn to confidentiality and I have a boss, I am telling you this is supposed to be a secret what do I do? 10 And that I responded to Captain Ober, I here by 11 12 direct you, I order you not to divulge this information to anyone. And made that quite 13 sta... in the -. 14 15 A: Excuse me, Thank you. Mr. Bailey: One second......Colonel I 16 didn't catch the tail end of you response if you 17 would be kind enough to repeat it? 18 19 Lieutenant Colonel: As I said Captain Ober 20 was concerned about his bosses and he had come 21 to me witch was outside of his chain of command

38

Q: And that the FBI had been explicate in asking him not to disclose this information to other people.

and I told him that the FBI had requested

Confidentiality this was there investigation and

that I gave him a direct order not to divulge the

A: Yes

22

23

4

12

- Q: Did you ever personally speak with anyone from the FBI about the investigation? 6
 - A: No, I did not,
- Q: Did you ever personally speak with anyone from the FBI about the need to keep this confidential from other people within the state 10 police? 11
 - A: No I did not.
- Q: So is the bottom line basically that you 13 made your decision about what to order Captain 14 15 Ober to do based on the facts as he represented them to you? 16
- 17 A: That is correct.
- 18 Q: And you didn't have any personal knowledge of whether the facts that he told you 19
- were true or weren't true. Is that right? 20
 - A: That is correct.
- 22 Counsel: I'm going to ask Captain Brown, to
- be so kind as to, here is a copy, one for the 23
- 24 witness and there's one for Mr. Bailey, if you
- could just have the court reporter, hand that to the

1 court reporter and let her mark it as exhibit one,

2 Colonel, You just let her mark it and you can have

3 it back

4 Lieutenant Colonel: Okay

Counsel: Okay exhibit one, do you

6 recognize the document?

Lieutenant Colonel: Yes I do.

Q: And can you describe it for me? So I can

9 apply it.

7

10 A: It's a correspondence from me to the

11 commissioner providing him the facts as I new

12 knew them to be based upon his request this

13 information after we disclosed to him that the FBI

14 had conducted the Investigation.

15 Q: In your memo, just a moment ago I had

16 asked you and you had said that you didn't have

17 any personal knowledge this was all based on

18 what Captain Ober had told you on October 5.

19 does your memo on May 18th 1999 document

20 what Captain Ober told you?

21 A: Yes it does.

22 Q: Now did I think you said that on that first

23 meeting that Captain Ober did not mention

24 anything about Trouper Standon being involved?

25 A: I don't believe he did at the time, no.

41

A: I believe he had..

2 Mr. Bailey: Objection to the form of the

3 question. He may respond here.

4 Lieutenant Colonel: I believe he did, had

5 said that.

11

6 Counsel: And did, Excuse me, Captain Ober

7 ever tell you that the FBI gave him the names of

8 two people that had supposedly bought there way

into the academy and had him go check to see if

10 they really were in the academy?

A: I'm not certain on that.

12 Q: Do you know, Did Captain Ober ever tell

13 you any of his efforts to find out more about the

14 process of getting into the academy?

15 A: no not that I recall.

Q: Did he ever give you any update about

17 what he told the FBI about the process of getting

18 into the academy?

19 A: not that I recall.

20 Q: Did Captain Ober ever mention to you

21 that when the FBI spoke with him that they left it

22 completely up to him who to tell at the State

23 Police about this information?

24 Mr. Bailey: Objection to the form of the

25 question. Sir you may respond.

1 Q: Do you know when he told you about

2 that?

14

3 A: Our meeting weren't formal. In fact if I

4 had an occasion to talk to the Captain I may

5 inquire if he had heard anything. At some point

6 He raised the name Standon as being someone

7 that had facilitated as involved in the meeting.

8 But I don't know when.

9 Q: Did Captain Ober ever tell you that, That

10 Trouper Standon had indicated during the course

of this investigation that he knew people that had

12 bought there way into the academy.

13 A: Repeat the question again.

Q: Did Captain Ober ever tell you that

15 during the course of the FBI investigation, Was he

16 giving you updates about this about the FBI

17 investigation at all?

18 A: Yes, if something happened that was

19 significant, yes he would.

20 Q: So, As part of this update, was what I

21 was wanting to know is weather Captain Ober

22 ever told you that Standon had said during this

23 FBI investigation that he actually knew people

24 who had bought there way into the State Police

25 Academy.

42

Lieutenant Colonel: My recollection of the

2 conversation is that he indicated that he need to

3 tell someone else and they said they would leave

4 it to him. If that answers you question,

5 Counsel: Well did he ever tell you that they

6 really didn't care who he told within the State

7 Police.

8 A: No.

9 Mr. Bailey: Let me note that the witness has

10 the tendency to answer questions very very

11 quickly. Witch is fine. Not a problem there. But I

12 would like to not an objection to the previous

13 question.

14 Counsel: Did you know it was captain Ober

15 who suggested to the FBI that a lieutenant

16 Colonel would have to be involved to have

17 something like that occurs?

18 Lieutenant Colonel: No.

19 Q: We have already established that in a

20 prior disposition with the FBI that it was on

21 October 13, 1998 that a wire tape first, first time

22 Colonel was used in a wire tap, and that that was

23 actually Lieutenant Colonel rather than Colonel.

24 Did you know that the FBI.....

1	Mr. Bailey: Let me, place an objection to
2	characterization of the of testimony let me place
3	and objection to the reference to the question.
4	Counsel: Did you know with that in mind
5	Did you know that the FBI agents had not even
6	picked up on the use of the word Lieutenant
7	Colonel on that tape until it was pointed out to
8	them by Captain Ober?
9	Mr. Bailey: Objection to the characterizatio
10	of testimony. Objection to a lack of foundation.
11	Objection to the following question. You may
12	respond sir.
13	Lieutenant Colonel: No.
14	Counsel: Were you ever, Did you ever now
15	through the FBI or Captain Ober that prior to
16	speaking to Captain Ober about the FBI
17	investigation the FBI agents had already talked to
8	people within the organized crime section about
9	the investigation?
20	A: No.
21	Q: Did you know that they had already
22	talked to someone out in the western internal
13	affairs office about the investigation?

24

A: no

1 Lieutenant Colonel: Confidentiality is 2 prefaced on the fewest number of people knowing about it as possible if the information were already fairly widely disseminated, or at least disseminated by them to a wider audience then there would be less need for confidentiality. Counsel: And that might have changed what you decision process was. Lieutenant Colonel: It might have, yes. 10 Q: So again you were basing your decision on what Captain Ober told you. 11 12 A: Correct. 13 Q: Now did you know that Captain Ober meet with the FBI in Indiana, PA at a Holiday inn 14 15 to watch a video tape? A: I believe, I am not sure what city it was, 16 but I know that he went to western PA to meet 17 18 with the FBI relative to the video, yes. 19 Q: What did he tell you about, Did he tell you about the meeting ahead of time? 20 21 A: Yes he did. 22 Q: And what did he tell you about it? 23 A: I believe he contacted me telling me the FBI had a video tape and that he, they wanted him to travel to western PA to meet with them. Now

1 Q: Again you were operating under the 2 premise that the FBI had specifically asked Captain Ober for no one else in the state Police to know about this. Is that correct? A: Correct. Q: And if in fact that was not the case would you advice to Captain Ober be the same? Mr. Bailey: Objection. You may respond sir. 9 Lieutenant Colonel: You need, If what was 10 not the case? Counsel: In other words if you knew at the 11 time Captain Ober came to you with this 12 13 information you had known that the FBI agents had already gone to organized crime unit and said 14 15 we have this investigation into people that may be able to buy into the academy, can you imagine 16 how this could have happened and they had a 17 whole discussion about it and if the people had said you better go tell you know the Bureau of 19 Professional responsibility they can help you out. 20 Would your advice have still been the same to 21 22 Captain Ober about not telling anybody else not 23 telling his Major..... Mr. Bailey: Objection to the form of the 24 question. You may respond.

46

again I believe that this was the circumstance. He indicated that he wanted to do that but in order to maintain confidentiality he felt that he should take a day off. And should use his own vehicle rather than to have people ask a lot of questions. I approved that he would do that and authorized him to use his own car and I believe I specifically said subsequently to this then because this is a work assignment that you should get your day back. And following the meeting I believe that he 10 11 came to my house with the video tape and I 12 viewed part of it. Q: What did he tell you about why they had 13 14 to meet at the holiday Inn? 15 A: I don't recall. Q: Did he tell you about why he was the 16 person who had to pay for the room at the Holiday 17 18 Inn? 19 A: No. 20 Q: Did he ever tell you that the FBI agents 21 really just wanted to meet him somewhere half

way that would be more convenient for both

A: I believe he mentioned that yes.

22

23

24

parties?

- Q: And did he ever tell you that the FBI
- 2 agents left it up to him where to meet?
- 3 A: I believe he indicated that it was a mutual
- 4 decision.
- Q: Did he tell you that they would have been
- 6 just as happy for him to come to FBI
- 7 headquarters?
- 8 Mr. Bailey: Objection. You may respond.
- 9 Lieutenant Colonel: Not that I recall.
- 10 Counsel: Did he tell you that they would be
- 11 willing to meet him in the State Police barracks?
- 12 A; Not that I recall.
- 13 Q: Did you know that a prior meeting that
- 14 he had when he listened to body wires before had
- 15 been held Bedford Barracks/
- 16 A: I don't recall.
- 17 Q: So was is, your decision or Captain
- 18 Ober's decision that this hotel room should be
- 19 rented in Indiana to watch the video tape?
- 20 A: That would have been his decision.
- 21 Q: Now when, Then again you were relying
- 22 on facts as he represented to you.
- 23 A: Correct.
- Q: You did not call the FBI and say what do
- 25 you need to meet with Captain Ober about?

- 1 tell anybody else did you also order him not to put
- 2 anything, not to document this in any way? The
- 3 contact.
- 4 A: Not that I recall.
- 5 Q: Do you recall if you ever ordered him or
- 6 directed him not to fill out a IAD complain
- 7 worksheet or anything like that?
- 8 A: We had a brief discussion relative to at
- what point that would be appropriate to fill out a
- 10 IAD worksheet in the event that ultimately TSP
- 11 officers were involved. I don't recall what
- 12 meeting that was that that would have occurred.
- 13 Q: Did you ever tell Captain Ober that he
- 14 should have the FBI send things to his home
- 15 relevant to this?
- 16 A: Not that I recall, no.
- 17 Q: And I think that had brought us up
- 18 forward to where you were saying that you had
- 19 been waiting for updates from Captain Ober about
- 20 when you were released from confidentiality.
- 21 A: Correct.
- 22 Q: And when was that?
- 23 A: As I said sometime in late April or early
- 24 May. I am not certain of the date.

1
_

- A: No, I did not.
- 2 Q: Or ask them where do you guys need to
- 3 meet or anything like that?
- 4 A: No
 - Q: You just trusted him and left everything
- 6 to him.
- A: Correct.
- 8 Q: Who finally, How long was this all going
- 9 on in confidential mood?
- 10 A: it was from October 5th until some time
- in late April or early May I am not certain of the
- 12 date.
- 13 Q: Who finally made the decision that
- 14 Colonel Evanko should know about the
- 15 investigation?
- 16 A: I had been inquiring of Captain Ober
- 17 when the FBI concludes or reaches the point
- 18 where they have gone far enough in the
- 19 investigation that confidentiality no longer
- 20 applies. We need to inform me so we let the
- 21 Commissioner know.
- 22 Q: I want to back up just a little bit because I
- 23 just realized that there was something I had
- 24 passed over. When Captain Ober was first
- 25 contacted back in October and you told him not to

- Q: Then I guess in answer to my question
- 2 was it you that decided that the Colonel Evanko
- 3 should know about the investigation?
- 4 A: Well I think that we both from the
- 5 inception knew that Colonel Evanko needed to
- 6 know about the investigation upon releasing
- 7 confidentiality. It was a matter of because my
- 8 knowledge of this was so limited having a time
- 9 and a place where we were both together and the
- 10 Commissioner was accessible to us that we could
- 11 advise him.
- 12 Q: And then that, when you told him about it
- 13 was Wednesday May 12th, 1999. Was that right?
- 14 A: I believe that is correct.
- 15 Q: And your May 18th memo witch is
- 16 exhibit one was written down after that, correct?
- 17 A: Correct.
- 18 Q: Basically just documenting what has
- 19 occurred?
- 20 A: Correct.
- 21 Q: When Ober finally came to you and said,
- 22 Okay were released from confidentiality what was
- 23 said during that conversation?
- 24 A: I don't recall.
- 25 Q: Do you recall any of it?

A: No, I would be speculating what was

2 said.

3 Q: When did you learn about Trooper

4 Stanton's involvement?

A: I believe when the video tape was

6 presented. He may have in a previous meeting

7 indicated his name somewhere along the line.

Q: Where you ever told that the FBI had

9 determined that Trouper Stanton was the only

10 member of the State Police involved? The only

11 member and that could be turned over to the State

12 Police to handle.

13 A: Repeat the question.

Q: Were you ever advised buy by Captain

15 Ober or anybody else that the FBI ultimately

16 determined that Trouper Stanton was the only

17 member of the state police that had engaged in

18 criminal conduct and that the investigation had

19 then been turned over to the State Police to

20 handle.

14

21 A: Captain Ober would have advised me of

22 that at some point,

23 Q: Do you know if that was, would have

24 been before or after the FBI released him from

25 confidentiality?

53

1 O: Tell us about that.

2 A: We explained to the commissioner as

best we can, my recollection of what we talked

4 about here today and Captain Ober explained his

5 involvement in this. And what the outcome was.

6 And.. to the Commissioner.

7 Q: What reason did you give Colonel

8 Evanko for not telling him about that earlier?

A: the same reason I've described today.

10 The request for confidentiality.

11 Q: The FBI had requested that?

12 A: Correct.

9

13 Q: Did you have a subsequent meeting with

14 Colonel Evanko and Lieutenant Colonel Coury?

15 A: Lieutenant Colonel Coury was in an

16 adjacent office the Commissioner asked him to

17 come into the room and then Captain Ober and I

18 then explained it to Lieutenant Colonel Coury

19 then also.

20 Q: So it was kind of one meeting he was to

21 come in?

22 A: Correct.

23 Q: And did you the reiterate with Colonel

Coury there that the FBI had directed Captain

5 Ober not to disclose this information to anybody.

A: It would have been conjunctive with that

2 in my mind, but I don't have a way of saying yah

3 that is actually when that occurred.

4 Q: I understand. Where where you, first of

5 all were Captain Ober together when you talk to

6 Colonel Evanko about the investigation?

A: Yes we were.

Q: And where was that, where did this

9 conversation take place?

10 A: I believe it was in the Director of Bureau

11 of Training Education office that we had the

12 conversation.

13

22

25

Q: How did that come about?

14 A: I had been at the academy with the

15 Commissioner and the other Deputies for a

16 session a consecutive session of command staff I

17 am not certain why Captain Ober was at the

18 academy that day. But he was. And I took the

19 opportunity of having the three of us together to

20 ask the commissioner if we might have a few

21 minutes of his time to explain.

Q: Well tell us about that meeting you had.

23 Was this just with Captain Ober, you and the

24 Commissioner?

A: Yes.

54

A: Correct

2 Q: Now you talk to.... Now that was on

3 May 12th. On May 13th you talk to Barbara

4 Christi, Chief Council with the State Police about

5 the FBI investigation. That was....

Mr. Bailey: What date was that?

Counsel: May 13th 1999

8 Mr. Bailey: Please repeat the end of that

question I missed it.

10 Counsel: I'll just repeat the question. On

11 May 13th 1999 the day after you disclosed this to

12 the Commissioner you also talked to Barbara

13 Christi, Chief Counsel of State Police about this

14 FBI investigation and I said I was curious as to

15 what prompted you to do that.

16 A: The Commissioners response to the

17 information was such that, I mean that he was

18 very agitated he was obviously displeased, He

19 initially verbally questioned, rhetorical questions,

20 why wouldn't the FBI tell me about this?, Why

wouldn't Louie Freeh tell me about this?, Louie

wouldn't Louie Freeh tell me about this?, Louie
 Freeh is a personal friend of mine. He then

23 indicated that he would have the FBI agents

4 transferred for not coming to him with this. The

25 next day Commissioner, again the Deputies met

- he asked me to explain to Lieutenant Colonel
- Westcott who was in that meeting at that timewhat had occurred and then I went through the
- 4 story again. That point he directed that we should
- 5 have an investigation that there should be a couple
- 6 Majors assigned to this to find out what the facts
- 7 of this were. Miss Christi is the department Chief
- 8 Counsel I need to run the circumstances past her
- 9 as I new them to see whether my decisions were
- 10 reasonable. Also through this process on my mind
- 11 was if based on the information I had if we
- 12 disclosed this information are we interfering with
- a federal case and federal investigation? Is that
- 14 thinking correct or was I off base?
- 15 Q: Again based on you belief that they did
- 16 not want you to tell anyone.
- 17 A: Correct.
- 18 Q: Who else did you discuss this situation
- 19 with?
- 20 A: After the release of confidentiality and
- 21 our meeting with the commissioner I discussed it
- 22 with a lot of people.
- 23 Q: Can you give me a few names.
- A: Yes, I have discussed it with all of my
- 25 Bureau directors, I have discussed it with Mary

- Q: Do you have any idea Charles Sodd the
- 2 Governors Director of Policy would have found
- 3 out?
- 4 A: Not that I know of.
- Q: How about Pete Tartline, the Governors
- 6 Deputy policy Director.
- A: I don't believe so
- 8 Q: Do you have any idea Leann Labickie
- 9 who replaced Tartline as Director of Policy would
- 10 have found out about it in March of 1999?
- Mr. Bailey: Counsel can I respectfully
- 12 request you to spell these names for us? I want to
- 13 make sure I get the spelling correct.
- 14 Counsel: I'll spell them but not right at this
- 15 moment.
- 16 Mr. Bailey: Well she needs them too.
- 17 Counsel: Well I'll get them for her.
- 18 Mr. Bailey: Well you make sure I get them.
- 19 Counsel: We will.
- 20 Mr. Bailey: Okay. Was that Deanne
- 21 Counsel: Leanne
- 22 Mr. Bailey: Leanne, I thought, see I didn't
- 23 hear that.

- 1 Woley from the Governors office I discussed it
- 2 with Leann Lebickie I believe Major Selihamer. A
- 3 number of people.
- 4 Q: Do you have any idea how any of those
- 5 people would have found out about the FBI
- 6 investigation as early as March of 1999?
 - A: No.
 - Q: Let me just go over a couple of them to
- 9 see if you have any idea of how they might have
- 10 known
- 11 Mr. Bailey: Are you representing that they
- 12 knew counsel?
- 13 Counsel: Yes, I am.
- 14 Mr. Bailey: We may have to depose you.
- 15 Counsel: Well you may have to depose then.
- 16 Mr.: Bailey: I will depose you before it is
- 17 over anyhow.
- 18 Counsel: In any event for now regardless of
- 19 the bases of this I want to know what you knew.
- 20 Do you know how Nan McGlocklin the Deputy
- 21 Chief of Staff for the Governor, knew about the
- 22 FBI investigation in March of 1999?
- 23 A: No.

58

- Counsel: And if they found out this
- 2 information from Mary Woley, you don't know
- 3 how she knew it?
- 4 Lieutenant Colonel: Not March of 1999.
- 5 Counsel: right March of 1999
- 6 A: No I do not.
- Q: But you would have talked to her about it
- 8 then after you had talked to the Colonel about it.
- 9 A: I did not talk to Miss Woley about it until
- 10 released from confidentiality by the FBI.
- 11 Q: But that would have been around the
- 12 same time that you talked to Colonel Evanko
- 13 about it?

- 14 A: Correct.
- 15 Q: If Mary Woley was also trying to discuss
- 16 the issue with Barbara Christi for example she
- 17 would know because you had just told her.
 - A: Correct.
- 19 Q: Now the administrative inquiry that was
- 20 done you said that Major Werts, maybe you didn't
- 21 say but we know that eventually Major Werts and
- 22 Major Williams did an investigation in the
- 23 summer of 1999. Did you ever find out when that
- 24 investigation was completed?

1	A: The commissioner had a conversation
2	with me I believe it was the last Wednesday of
3	Sept. of 1999.
4	Q: And he told you it was over?
5	A: Yes, he did.
6	Q: Did he tell you anything about the
7	outcome of that?
8	A: He told me that Captain Ober had
9	misrepresented the facts as he provided them to
10	me and as far as the investigation that is really al
11	he told me about the investigation.
12	Q: Did you ever tell Captain Ober that the
13	investigation was over?
14	A: I don't recall whether I did or not, I
15	believe I did.
16	Q: Do you recall if you mentioned that to
17	Major Wall as well?
18	A: I'm not certain.
19	Q: I want to take about five minutes break
20	because I want to make sure I don't have any
21	more questions for you.
22	A: Okay.
23	Q: So if we could all take five minutes?
24	
25	Mr. Bailey: Were back in operation.

A: It converted our, As I understand it converted our clean system from gum terminals and dedicated lines to TCPIP configuration that allowed you to transmit information more easily and also built our, our e-mail process but desktops on peoples desks preliminary the use of computer technology throughout the department. 7 Q: So as part of that first project the enterprise network you would have, the 9 10 department had to buy a lot of computers I guess and a lot of hardware. 11 12 A: Yes, we did. 13 Q: And so that would have been a large portion of that hundred million dollars of that 14 project wouldn't it be? 15 16 A: No, that contract was let prior to Mike coming on the job. In fact many of those 17 18 computers had already been expended before I got 19 my job as Deputy Commissioner of Staff. 20 Q: Do you know for certain the price of those computers ext.... are not part of the over all one hundred million dollars. Whenever you hear 22 one hundred million dollar project..... 23 24 A: I am very sure that it's not at the enterprise network project as it were cost thirty

Albert Rodriguez: 10:58AM Back on Counsel: Okay, I just want to clarify one thing back to the IMS Project. There was I think I was trying to ask you but I didn't really understand it that well at the time, but there was a larger technology that was comprised of not only the IMS project but of also the Enterprise Network. Is that right? 10 A: Well technically Enterprise Network is a 11 component of IMS. It was the first thing that needed to be completed in order to create the 12 13 foundation upon witch IMS was built. The contract for the enterprise network had been already been let I believe it was in June of 1998 to 15 16 IBM and it was in process when I got my job. 17 Q: Oh when you got your job. You kind of trailed off so I was... 18 A: When I got my job as Deputy, That 19 contract was already signed and IBM was the 20 21 prime contractor on it. Q: The Enterprise network would that, I 22 23 guess that was the foundation witch everything else can come from. 24

	62
1	five million dollars. I believe that IMS the total
2	bottom line on IMS is going to come closer to
3	hundred twenty to hundred thirty million. And
4	that did not count I believe that did not count the
5	enterprise network.
6	Q: Who would know that for certain?
7	A: I would ask is Mr. Drumand is our
8	physical officer would probably know and Mr.
9	Heartly who is in information technology plans
10	and controls and handles the contracting for the
11-	technology initiative would probably know.
12	Q: Mr. Drumand is the physical guy he
13	would take care of the budget and things like that?
14	A: Yes, he would.
15	Q: Okay, alright, thank you.
16	Mr. Bailey: Okay Colonel now it is my turn.
17	I, first of all want to thank you for your responses
18	to my opponents, opposing councils questions.
19	And I have a serious of questions for you. Now
20	my methodology is a little bit different. What we
21	are out to do here is to establish as completely as
22	we can a good fact record. And in that regard I
23	would invite and in fact encourage you if at any
24	time when I ask a question not to reframe from or
25	feel shy and I am not suggesting that you would to

- 1 ask me what I mean by a question and even more
- 2 because I think it will save us time. Where I am
- 3 going with a question. So I will be pleased to give
- 4 you an offer of you know not just what I mean by
- 5 a particular If it seams awkward or its
- 6 misdirected but also about where I want to go
- 7 generally. I also like to move around in different
- 8 areas and structure my depositions and in that
- 9 regard I will try to inform you where I am going
- 10 when I do a change of direction to give you a
- 11 chance to do a mental change. Okay. Where I
- 12 would like to begin is in the area the fall of 1998
- 13 where Captain Ober comes to talk about things. I
- 14 don't mean to be facetious with this question I
- 15 mean it as a very serious question. Have you ever
- 16 known ever had any experiences that would
- 17 indicate to you that Captain Ober might be, don't
- 18 laugh at me know, clairvoyant or prophetic able to
- 19 for tell the future or have some connection with
- 20 some sort of physic power ability that may have
- 21 enable him to for tell the future?
- 22 Lieutenant Colonel: No.
- 23 Q: Well I think if I understand the testimony
- 24 correctly as well as the char iteration of testimony
- 25 that were in gendered in questions to you by

- caught in the middle of it. What do I do. But he
- 2 never relished his role or having this information.
- 3 Q: Now I am not, I don't profess to be an
- 4 overly religious person, but are you familiar with
- 5 the Gacenimity or the Garden of Gacenimity, let
- 6 the cup pass from me, metaphor from the Bible?
- 7 A: You would have to explain it.
- 8 Q: That's all right. Is it fair to say that
- 9 Captain Ober was burdened and concerned that
- 10 this information came to me. Like here I have this
- 11 thing in my hands what do I do?
- 12 A: That would be a correct assessment.
- 13 Q: Okay and my very capable opponent had
- 14 indicated in characterization of testimony that I
- 15 believe I'd object to at the time that on or about
- 16 the 13th Oct. of 1998 to the Ernst while efforts of
- 17 the FBI some sort of tape recording had been
- 18 made or some information had come to the FBI
- 19 that the word Colonel was used. Is that correct?
 - A: That's what I am lead to believe, yes.
- 21 Q: Okay now let me ask you something
- 22 Colonel Hickes are there any facts known to you
- 23 that Captain Ober worked with the CI's in that
- 24 case or worked directly in basic investigation of
- 25 this matter?

20

- 1 opposing counsel. Mr. Ober came to you on or
- 2 about Oct. 5th of 1998 is that correct some time
- 3 around that date?
- A: yes
- Q: and at that time subsequently he
- 6 indicated to you that there was information
- 7 allegedly imparted to him by the FBI. If it didn't
- ascend from above that there might be a colonel
- 9 or somebody of that rank involved in this terrible
- 10 thing that the FBI was investigating. Now am I
- 11 correct?

19

- 12 A: Yes he said that the term Colonel had be
- 13 used.
- 14 Q: So here's Captain Ober and it's October
- 15 the 5th it's 1998 and one of the things as part of
- 16 this burden he is carrying is this portent that
- 17 somebody with this rank of Colonel could
- 18 possibly be apart of it. Is that correct.
 - present of upon or in its
 - A: Yes.
- 20 Q: Incidentally, Was Captain Ober you
- 21 know was he relishing this or was he upset and
- 22 concerned about the seriousness of this?
- 23 A: At no time did Captain Ober give the
- 24 impression that he was relishing this. He seamed
- 25 generally concerned about it, and somewhat

66

- A: No, he did not.
- 2 Q: Okay, well I think you already answered
- 3 the question that you don't know of any prophetic
- 4 or fortune telling abilities on Captain Obers part.
- 5 Let me ask you, go back again, I want to go back
- 6 that conversation that occurs sometime in early
- 7 October around the 5th or so in October when
- 8 Captain Ober came to you. Do you remember now
- 9 where Colonel Conley was.
- 10 A: When I received my appointment as
- 11 Deputy of staff witch I believe would have been
- 12 the Friday before I believe that Lieutenant
- 13 Colonel Conley was promoted Captain to Major
- 14 he would have been troop commander I believe
- 15 troop B Washington up until Friday and then
- 16 Monday he was promoted. I believe that was the
- 17 sequence of events.
- 18 Q: So the sequence of event you know they
- 19 may be jumbled just a little bit I mean that was a
- 20 little while ago. Is that here was then Major
- 21 Conley how was then moving into head of what
- 22 BPR.

- 23 A: Correct.
- 24 Q: Of witch IAD is a division.
 - A: Correct.

rain Ober was right?

1 Q: IAD was where Captain Ober was, right	?
--	---

- A: Correct.
- 3 Q: And that Major Conley had come from
- 4 troop commander of troop B.
- 5 A: Correct.
- 6 Q: Did you ever find out where Mr. Standon
- 7 was from?
- 8 A: I believe he was troop B.
- 9 Q: Did you ever find out, did you ever come
- 10 to learn that Major Conley was aware of or knew
- 11 certain political figures in Allegheny County?
- 12 A: I'm am not familiar with whether he is or
- 13 is not associated with.
- 14 Q: Okay. Did any information ever come to
- 15 you to indicate that Major Conley knew a fella by
- 16 the name of Doc Feilder?
- 17 A: No, not that I know of.
- 18 Q: Okay that is fine. Do you know who Doc
- 19 Feilder is?
- 20 A: No I don't.
- 21 Q: Do you know who Lenny Bodeck is?
- 22 A: No I don't.
- 23 Q: Joe Preston?
- 24 A: I believe Mr. Preston was a legislator, I
- 25 am not sure whether he still is.

69

- I Q: Are there internal audits procedures in
- the PA State Police in the compliance internal
- 3 compliance with regulations and regulations
- 4 processes.
- 5 A: The system is in process review division
- 6 of professional responsibility has responsibility
- 7 for I'll call it an internal audit on unit policies and
- 8 procedures.
- 9 Q: On compliance type issues adhere
- 10 processes and program efficiency and maybe that
- 11 type of thing?
- 12 A: Generally speaking, yes.
- 13 Q: Okay sir. Now do you know whether or
- 14 not there's ever been an internal evaluation in the
- 15 PA State Police in the hiring process?
- 16 A: I don't know.
- 17 Q: Okay. Now it is my understanding in
- 18 response to questions on direct you indicated that
- 19 your recollection is there was some type of issue a
- 20 fact issue with moving from Band B to Band A
- 21 that that would somehow make you more
- 22 available for the hiring process. Is that correct
- 23 there is some sort of sorting process?
- 24 A; That's my recollection yes.

Q: Joe Preston is still a legislator. Now

- 2 getting back to that, these events that surround
- 3 this first week in October it indicated that you had
- 4 the responsible opposing counsel's question that
- 5 you had a direct meeting of some type, your not
- 6 certain of where it was, with Captain Ober. Is that
- 7 correct?
- A: Correct.
- 9 Q: Now prior to that, prior to that Colonel
- 10 Hickes had you had had any knowledge about
- 11 these allegations that the FBI had concerning the
- 12 hiring process within the PA State Police?
- 13 A: Not that I recall.
- 14 Q: Now at this juncture I am going to come
- 15 back now, okay to where we are, again I am going
- 16 to do one of my little change of directions here.
- 17 Okay. Have you ever known of an academy class
- 18 to have been retested by order of the
- 19 commissioner?
- 20 A: no I haven't..
- 21 Q: Do you have any knowledge of any
- 22 favoritism of hiring of troupers sons taking place
- 23 within the PA State Police?
- 24 A: I have no knowledge, no.

70

- 1 Q: Okay. Now I am going to take you back
- 2 now again to the Oct 5th time when captain Ober
- 3 is talking to you there. Did Captain Ober indicate
- 4 at any awareness of a previous investigation
- 5 having been done by the FBI in this thing?
 - A: No
- 7 Q: And of you own knowledge whether by
- 8 rumor or by virtue of some official document had
- 9 you been aware of any investigation done by the
- 10 FBI?

- 11 A: no, I had not.
- 12 Q: Well who is head of the Western
- 13 organized crime group out there?
- 14 A: I have no idea right now.
- 15 Q: Frank Monico?
- 16 A: He's the troop commander in troop A
- 17 Greensburg currently. I don't know what his
- 18 capacity was in 1998.
- 19 Q: Do you know Frank was in charge of the
- 20 organized crime division on or about 96 or 97 in
- 21 that area there 95?
- A: he may have been I don't know for sure.
- 23 Q: Okay. Do you know who was in charge
- 24 of Western AID, Western PA Park I don't know
- 25 what your term is of IAD at that time.

A: No I don't recall.

Q: Have you ever had the opportunity 2

... Strike the form on that. Do you know whether 3

the FBI had ever gone to Western division of the

organized crime unit or IAD with information

about Mr. Standon?

A: I don't have any first hand knowledge of

that no.

Q: And do you know whether or not that

information was ever communicated quote 10

unquote front office? 11

12 A: I don't know.

Q: Do you know if lieutenant Colonel 13

Quarey had ever received any information from 14

Western AID or from the organized crime 15

division out there in Western PA about Mr. 16

17 Standon and his activities?

18 A: No I don't.

19 Q: Do you ever talk to FBI agent Suley

about what occurred out there. 20

A: No, I did not. 21

MOUNTE

22 Q: Do you know whether the Mr. Monago

may have at some time called Colonel Coury prior 23

to when the FBI....Colonel Hickes let me strike 24

the previous question let me rephrase it this way.

answer to whatever you question is. I would just

object to the form of the question in whether or

not that was in fact ever information provided by

Colonel Coury in a deposition.

Mr. Bailey: Well I hope you enjoy reading it

as much as I do. 6

Counsel: I am looking forward to it.

Mr. Bailey: Let me ask you this way. Point 8

and fact is that you don't know of any such thing

10 do you?

20

Lieutenant Colonel: No I don't. 11

Q: And you don't know of the FBI....In fact 12

let me ask you something Sir. Colonel Hickes 13

until today where you have heard via these 14

questions implications that there was a prior 15

awareness by the PA State Police of Mr. Standons 16

activities. Prior to today, if that were the case and 17

Lieutenant Colonel Coury deposition will speak 18

for itself, you didn't know anything about that 19

prior to that today did you. Whether there had been any information available to the PA State 21

22 Police if indeed there was. Did you?

23 A: I had no official knowledge of that no.

24 Q: Any rumor knowledge of it? Do you know whether Lieutenant Coury had ever

gone to Colonel Evanko with information about

some FBI investigation into the practices of Mr.

Standon, his activities.

A: No I don't.

Q: Did you ever hear of Mr. Standon and his

alleged involvement in criminal activity or alleged

criminal activity prior to when Captain Ober had

9 come to you?

10

20

3

A: No not that I recall.

Q: Do you know of any investigations into 11

the activities of Mr. Standon prior to when the 12

FBI came to Captain Ober? 13

14 A: Not that I recall, no.

15 Q: Well, Mr. Coury has testified, I think the

opposing counsel will agree with me that he got a 16

17 call from Monogo about Mr. Standon sometime

prior to Oct. 1998. Do you know what Lieutenant 18

19 Colonel Coury ever did with that information?

Counsel: Excuse me counsel. That's a

21 statement of testimony. First I would object to the

question as to form and also object to it as to even 22

being in existence with regards to that being the 23

testimony of the partial deposition of Colonel 24

Coury. So is not to mislead Colonel Hickes in his

A: Captain Ober had indicated to me that

may have been the case.

Q: When did Captain Ober indicate that to

you. Was it after October 5th 1998? 4

A: Oh yes that would have been maybe a

year ago.

Q: Okay. So about a year ago Captain Ober

makes some reference that hey there was some

prior investigation.

A: Correct, 10

11 A: And to the best of your knowledge as you

sit here today the PA State Police if indeed 12

Colonel Coury himself was told did absolutely 13

nothing to internally do anything to investigate

whether or not trouper Standon was involved in 15

16 some sort of job selling scheme. Am I correct.

A: I don't know.

18 Q: Do you know whether the FBI ever

19 expressed any concern that the lack of activity by

the PA State Police on the prior impart of the 20

21 information to the organized crime route and

western AID, IAD I'm sorry, whether that played 22

23 any role in bringing that to information to Captain

Ober? 24

25

17

A: I don't know.

Q: You have no way of knowing that. Only

A: I would assume so yes.

Q: I would too. Now if I understand it

the FBI would know that. Is that correct?

correctly when Colonel Coury testified he 5

indicated some concerns about the FBI ability.

Not that it would ever be intentional.

A: No.

2

16

Q: But at their ability to keep there mouth

shut. I act in a political way I just can't imagine 10

11 the FBI doing that but I want to ask you I'm just

curious from you knowledge and experience do 12

13 you have any knowledge of experience that would

indicate that the FBI would be loose with

information? That you know of. 15

A: Not that I know of.

17 Q: Aside from reading in the newspaper

watching TV or reading book that sort of thing. 18

As a professional you have information known to 19

you that would indicate to you that the FBI has 20

loose lips. Is that fair to say? 21

22 A: That's correct.

23 O: Alright. Now counsel has asked

24 questions about this issue surrounding Mr. Ober

telling you that the FBI wanted confidentiality. I

77

1 Q: Hey Colonel. Well we can blame that on the French I guess. But point and fact is when someone address you by that title witch is a very

respectable positions of course your reference is

Lieutenant Colonel or full bird it's Colonel right? 5

A: Yes

Q: It's Colonel. Okay. So if you take all

those Lieutenant Colonels and the Colonels in the

PA State Police and you added them up on Oct.

10 5th 1998 can you tell us how many there were.

11

6

14

12 Q: had the number changed dramatically as

of Oct. 13th 1998? 13

A: No.

15 Q: So if there was a prophecy there the

16 prophecy on how many Lieutenant Colonels or

17 Colonels there were total wouldn't have exceeded

18 4? In the fall of 1998. Am I correct 4 people.

19

Q: Now if that group was a potential target 20

of an FBI investigation would you go and tell

22 them?

21

23 A: I would not.

24 Q: Okay. Now the I believe the FBI

testimony was that there wasn't any recollection

fairness to counsel I believe she characterized FBI

testimony, at least to some extent, as not being

consistent to that. Now let me ask you a series of

questions based upon your knowledge and

experience as a professional police officer. Is it ok

to tell a target that you are investigating them? I

mean should you, would you go and inform a

target that someone was investigating them?

9 Unless there was some need or request to.

10 A: Generally speaking, no.

Q: Okay. And if, how many Colonels are

there in the PA State Police Department?

13 A: There is one full Colonel.

Q: One full Colonel?

15 A: And three Lieutenant Colonels.

16 Q: You ever been in the Army or Navy or

17 Army recur. Whatever.

18 A: No

11

14

19 Q: Okay. Well when you talk about call

20 somebody lets say, you're a Lieutenant Colonel

21 correct. Right?

22 A: Correct.

23 Q: Do they say hey Lieutenant Colonel or

hey Colonel?

25 A: Hey Colonel.

of asking for confidentiality but it was expected.

Now based on that and I believe that came from

agent Kush and I make that representation to you

based upon my recollection of the record and I

will yield to counsel comments if they agree with

me. Now my understanding of the initial

discussion between you and Captain Ober was

that he expressed and awareness that by definition

9 you could not have been include in that category

10 at the time this was going on. Am I correct?

11 A: He expressed that there was an interval of

time between 1995 and 1998 that I was not in a

position to either a. to be a lieutenant Colonel or 13

because I was in the Bureau of liquor enforcement

probably influence the hiring process he did

acknowledge I had been a lieutenant Colonel

before and if this thing predated 1995 then I was a

lieutenant Colonel then also but the did express by

19 his reasoning I was not one who would have been

20 involved in the colonel.

21 Q: And was Colonel Evanko, when you

was that he exhibited I think you used the term

the way you describe it.

eventually told Colonel Evanko my understanding

agitation that he was very agitated. I think that is

A: Yes I did. 1 2 Q: Okay. Now do you know if Colonel ever said to Captain Ober. Captain you did the right 3 thing. Did he ever say that to him? 4 A: Not that I know of. Q: Well you know Colonel Hickes being a 6 witness is not a pleasant thing, but it is a question 7 I have to ask. Did you do the right thing? 8 A: I think I did base on the information I had 9 10 at the time. Q: Well for what it is worth so do I. And 11 that's not worth anything I am not a witness here. 12 I think you did too. You know that's just an 13 opinion. Now what when Colonel Evanko 14 expressed agitation upon first being informed, He 15 said things about Louie Freeh. How do you spell 16 Louie Freeh's last name. Do you know how to 17 18 spell it. A: I am not certain. I think it is Freeh. 19 Q: Okay. 20 A: I am not positive. 21 22 Q: And he expressed upset about the FBI. I'm there friend and they didn't tell me. Is that 23 24 correct?

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25

A: Yes

A: I don't recall. 1 2 Q: Do you have a recollection that he said to captain Ober Captain Ober do you think I would 3 be apart of this thing? A: not that I recall. Q: Colonel Hilkes, did Captain Ober ever indicate to you that he believed that Colonel Evanko was involved in this somehow? 8 A: No he did not. 9 Q: Did Captain Ober to the best of your 10 knowledge as a consummate professional trying 11 as best he could to show respect for an official 12 investigation and the purposes of an official 13 14 investigation. 15 A: In all his dealings with me I would say that is a fair characterization, yes. 16 17 Q: Alright. Now there has been as we moved through this lawsuit an implication made 18 that Captain Ober misrepresented what the FBI 19 may have said. Based upon of your knowledge of 20 21 the facts, what I struggle with and my question is 22 if captain Ober had either misunderstood what the 23 FBI had said or wanted or even misstated the 24 extent of there interest in confidentiality or

Q: Well 2 A: Let me rephrase that he did not use those Q: No you use your own words and they 5 will stand for themselves. I am just going back in my mind to your testimony and of course what my client has told me naturally. But the point and fact is that bottom line is that he expressed disappointment that the FBI had not informed him or had not brought this matter to his attention. 11 Right? 12 A: That is correct. Q: Okay. Now you know whether the FBI 13 had brought other investigations to God forbid the 14 PA State Police or law enforcement to Colonel 15 Evanko attention. A: I don't know. 17 Q: Did Colonel Evanko ever say anything 18 19 May 12th the day that you told him that you know did they suspect me? 20 21 A: I think he did utter those words or something similar, yes. 22 23 Q: Well did he ever say to you Carl Hickes, 24 Bob, Colonel, Mr. Hickes did you think I was involved in this? Did he ever ask you that. 82

confidentiality what possible difference, Colonel Hickes would it have made? A: I don't know if it would have made any difference or not. Q: No sir because you as a deputy commissioner and someone I think is quite clear to me at least is an incredibly confident professional. And that's meant sincerely and not just to blow smoke. Because when you looked at the facts in front of you is it fair to say that given 10 11 the focus intent purpose and what facts were about the FBI investigation that a command 12 decision needed to be made on who to inform and 13 14 that a decision was made by Captain Ober apparently concurred in by you in terms of 15 reasoning I am not talking words of an order in 16 17 terms of reasoning that confidentiality was important to maintain investigation integrity and it 19 should not go beyond the FBI until they say or indicated its okay no matter where it might go. 20

Q: Alright sir. Colonel Hickes my

understanding when Major Werts and Major

21

22

23

misstated any expression of FBI interest in

1 ordered by Colonel Evanko that you were

2 interviewed. Am I that correct sir?

3 A: That's correct.

4 Q: You read your rights?

A: I don't recall.

6 Q: Well If you were read your rights its fair

7 to say that any probably statement or tape

8 recordings would indicate that is that correct.

9 A: Yes, that is correct.

10 Q: Do you have a recollection of ever

11 listening to the tape recording of your interview?

12 A: I was given a video or an auto cassette in

13 micro cassette form I've never seen a transcript

14 and I have never listened to the audio.

15 Q: Were you ever indicated it was a, do you

16 have an understanding of this investigation that

17 was ordered into the events of the fall of 1998 was

18 that investigation into you?

19 A: I purposed that question of Major Werts

20 and of Major Williams in advance of my

21 interview and my recollection is there response

22 was that there investigation was into the

23 circumstances of the FBI investigation of this

24 matter.

25 Q: So it could have been into you?

85

1 Q: Well did Colonel Evanko ever indicate

2 that jeeze I glad you didn't tell me that way they

3 know that you know I clean and not involved in

4 such a thing.

A: No he did not.

Q: I mean did it ever occurred to you at

some point that maybe he should have been

8 pleased? That he wasn't informed and it was a

9 clean investigation and that was done without any

10 interference and without any appearance of any

11 interference.

12 A: That certainly would have been a

13 possibility, yes.

14 Q: All right now let me move to a different,

15 I am going to shift gears on you again. Okay. Lets

16 move to the questions that counsel that Miss

17 Guido asked about these folks over in the Governs

18 office she went through so many dog gone names

19 I'll be honest with you I did not get them all. I

20 didn't get them all. But she had indicated that at

21 some point or I think you had responded that at

22 some point around the Captain.. strike that...

23 Colonel Evanko, That around the time Colonel

24 Evanko was informed by you an Captain Ober

A: My understanding of what they said was

2 that it was the FBI's investigation not...

Q: So they weren't, were they investigating

4 what the FBI did?

A: yes.

6 Q: Well let's go back to May 12th 1999. And

7 Colonel Evanko made the statement I'll have the

8 agent transferred. Do you remember that.

A: Yes I do.

10 Q: Now do you know whether any request

11 was made of the FBI to transfer or punish the

12 agent involved?

13

17

A: No, I don't.

14 Q: Why if you know the answer to this. Do

15 you know why ... strike that. Did Colonel Evanko

16 ever indicate why he was so upset?

A: No, he did not.

18 Q: I mean, Do you know why he would be,

19 if there was any information out there that might

20 indicate that he would be involved do you know

21 why he would be upset that someone didn't tell

22 him that they were checking on the possibility of

23 his being involved in something?

24 A: You've got me....

86

that you may have had some discussions with

2 some folks in the Governs office?

A: Correct.

4 Q: Do you know if Colonel Evanko would

5 have used you as some kind of political or career

6 threat? I am sorry to have to ask you these

7 questions. And you may not know the answers but

8 answer as succinctly as you can please. Do you

9 know if he would have used you in that way.

10 A: Not that I am aware of.

11 Q: Is he afraid of you?

12 A: Not that I an aware of.

13 Q: Who does he go over to talk to at the

14 Governs office. Who is his contact?

A: I don't know who all. He certainly talks

16 to a lot of people in the Governess office. There

17 are a lot of people.

15

18 Q: That is part of his job. Right?

19 A: Yes it is.

Q: I mean I would hope that as a PA Sate

21 Police Commissioner I would certainly applaud

22 him in effort to communicate with political

23 leaders because that's the way our system runs,

24 civilian leadership. Right?

25 A: Correct.

.

r he ever

Q: Okay. Now do you know whether he ever went over there talking about Captain Ober about

3 what Captain Ober did?

A: No I don't

Q: Do you know if he ever want over

6 they're talking about Colonel Hickes and about

7 what Colonel Hickes did?

A: No I don't.

9 Q: Do you know whether Captain Ober was 10 ever read his rights on this thing, whatever it is

11 called.

ጸ

12

A: I don't know.

Q: I'm going to change gears on you again for just a little bit, okay? During conversation an during your responses to Miss Guido's question you had... I'm worried about time too, we'll get

17 you out of here. You had used the term chain of

18 command do you remember that?

19 A: Yes I do.

Q: And I think you had eluded, I think your response was in the nature of, well you were not

22 in Captain Ober's chain of command. Do you

23 remember that?

24 A: Yes.

89

1 Q: Awkward question, let me withdraw it, I

am not sure what I am asking either, Good

3 objection. Were going to have to change tapes

4 here in just a second so I am going these

5 gentlemen here who just informed me of that. Do

6 you just want to change right now maybe and that

7 will give were going to shut this down for just a

8 minute. Please lets not go anywhere and....

Albert Rodriguez: 7:39AM

10 Albert Rodriguez: 7:48AM

9

11 Mr. Bailey: Alright sir we had just changed

12 tapes. I want I have a few question a few brief

13 questions about this chain of command thing.

14 Okay, one of the issues that's arisen in this case

15 are some very very serious questions about when

16 changes in the PSP regulation AR one may have

17 taken place. Now as a foundation question for

18 some questions that I have about that change

19 when those things took place who did them and

20 what they did. I'd like to go back to some

21 questions that Miss Guido was asking you about

22 the about your job, what you do. Now I want to

23 take you, go back in you minds eye to December

24 2000, January 2001, and Feb. 2001. What were

25 you doing at that time?

Q: Okay. Now given all the facts a

2 circumstances here to me based on what I know

3 about this I can't understand on even why that's

4 even an issue. Can you tell me why that would be

5 an issue. And maybe I can lay a foundation just a

6 little bit better. Well you go ahead and respond I

7 am changing questions. Go ahead sir.

A: The circumstances as I understood them

9 to be at the time, in my mind, gave Captain Ober

10 the ability to circumvent the chain of command

11 because of the limited information presented to

me and I believe was presented to him at the time.

13 Therefore I don't see chain of command being as

14 important of an issue, but other may. And they

15 may be able to articulate why it is I don't know.

Q: Okay. The fact is that the information

17 available at the time indicated that chain of

18 command adhering to it at least in terms of

19 reporting it let alone the obvious reasons

20 implications you have already attested to about

21 confidentiality did not for any apparent reason.

22 Demand that we adhere to or report to some chain

23 of command. Is that fair to say.

16

24 A: I am not sure what you asking.

90

A: I was Deputy Commissioner of staff of

2 State Police.

Q: Well give me put a little meat on those

4 bones for me Colonel.

5 A: That was, generally speaking the

6 December time frame of the year is a little bit

7 slow in the staff function of law enforcement. And

8 generally I take a weeks vacation around the

9 holidays. But when I come back for the

10 January/February time frame you have to get

11 prepared for budget hearings. And budget hearing

12 are annually February/ March time from for both

13 the house and the senate and a large portion

14 budget hearings is budget prep particular in my

15 shop because it does involve the budget and as

16 well as the large expenditures in technology so I

17 would speculate that I was involved in that.

18 Q: All right now, You are familiar with AR

19 one at least generally?

20 A: My recollection is AR one is a table of

21 organization of the department.

22 Q: Yea and I don't think Albert Einstine

23 could sit down and repeat everything that is in it.

24 It's rather gloominess kind of thing. Right?

A: Correct.

25

(

Q: Now	does	anyone	ever	come	to	you	at

2 different times about purposed changes in PSP 3 regulations.

4 A: I'm not sure what you mean.

Q: Do you ever receive notifications or

information in through you official channels or 6

what not about purposed changes, you know 7

whether or not asking your advise or soliciting an 8

opinion or have you maybe on your own made 9

recommendations in how regulations can or 10

should be changed. 11

1

12 A: Not that I recall. If I had it would have

been rare. I do see the changes when they are 13

finished by the Bureau of research and 14

Development. And they're being submitted 15

through for approval so changes or proposed 16

changes would cross my desk. And I have the 17

opportunity to make comments on them at that 18

19 time if I see an issue with it.

20 Q: Well let's talk about that. I am going to

ask a few questions about this process and AR 21

1.102 subsection C am I stating that correctly sir? 22

Subsection C. Are you familiar with that? 23

24 A: No, I am not.

93

straight and narrow. Now you know obviously I

am certainly embellishing that and what not but it 2

seams to me that you have indicated that if there 3

were a significant change in a regulation at least

the proposal process the propose change process 5

would likely come to you? I not saying it have to

but it would likely come to you. 7

A: They, the proposed change when it's 8

9 approved and done in final form or what the

bureau and development believes is final form has 10

to go through the signature process. Generally the 11

deputies would sign off on that. That they have 12

read it, they understand it, and they generally 13

14 approve it.

Q: And subsection C didn't come to you did 15

16 it?

17 A: I, these come to me all the time I don't

have any specific recollection of that. 18

Q: And in fairness you my not have. Is that 19

right? 20

22

23

A: Well I don't know I don't know if had 21

come to me or not is the point. Typically they do come to me and I would have to assume it did but

I would need to review I would initial off on that

if it had. 25

1 Q: Well, subsection C has to do with the

chain of command. Now if there was a major 2

change in definition or the responsibilities each

member would have to the chain of command.

And now that were going review and change

process would you like to think that you would be

asked an option or an opportunity to review it /

A: Again I would need more information.

The process doesn't always work, that everyone g

gets an opportunity to comment before hand but I 10

should be able to see the change as it comes

12 through for approval.

8

11

Q: Let me ask about that. As again I haven't 13

walked in your shoes so I don't know what it is 14

like to be where you are make the decisions that 15

you make and process the information that you 16

17 have to process to do your job. Are you saying

that if I as a research and development folks there

19 and I've got somebody, you know captain Ober

20 comes to me and says we need to change this dog

gone section here or we need to add a section on 2.1

the chain of command. We have too many cases 22

23 where these folks out there are circumventing the

chain of command and we've got to put 24

something in here to make sure they follow the

Q: Well if you didn't initial off on that, then

2 obviously that means it didn't come to you.

Right? 3

A: If I didn't initial off then that means that I 4

did not see it I on occasion have people sitting my 5

capacity acting in my steed. There is a possibility

that it came to one of them. I don't know.

Q: Okay. What's a historic file? What's 8

9 that?

A: I believe that the file the bureau of 10

research and development keeps on the directives 11

within the Pennsylvania State Police. 12

13 Q: Is it supposed to contain information

14 about that the process of changing a regulation,

like what suggested changes there were, who saw 15

16 that who contributed to it where it went here

where it went there. 17

18 A: Candidly I know idea what all is in the

19 historic files. I don't know what all the

information is in it. 20

Q: Okay. But you don't have any, you are a 21 deputy commissioner and as you sit here today 22

23 you don't have a recollection off the top of your

head, not to say it didn't happen, but you don't

have a recollection as you sit here today about a

change in AR 1 specifically adding a section that

purports to address a definition and the responsibilities of chain of command.

A: No, I don't have a recollection of that.

O: Have you ever looked at a historic file?

A: No, I have not.

5

Q: A few things on IMS. I have gotten a

hold of a some documents that indicate to me that 8

captain Ober was on some sort of voting comity 9

there. Like a procurement comity. Now I not

familiar how you folks do thing in the PA State 11

Police so bare with me because my questions may 12

not be the most well informed. And I don't have 13

advantages that your attorneys do of access to the 14

kind of information that they have. So my 15

questions are sort of dumb in common terms bare 16

with me. Was Captain Ober involved in a 17

procurement process? 18

A: Yes he was. 19

Q: Now in a pecurement process in most 20

contract acquisitions systems that I am familiar 21

22 with. US Military and things I have done in a

former life. You have to gather as much 23

24 information as you can and you go through a lot

of different evaluation processes before you make

Q: Okay and what part of the process was 2 he working on?

A: He had worked as the team leader for the 3

request for qualified contractor to evaluate

proposals and swore those proposals and makes a

recommendation of who the successful bidder

should be.

Q: Well what's the voting comity? What's 8

that do? 9

10

11

A. Well that's the portion of the team that had the roll of scoring the proposals and then rendering the vote on the best solution or the best

12

company that had made there proposal. 13

Q: Well in order to contribute to or make 14 15 that decision you have to have a comprehensive

grasp of the technology It's capability and its cost 16

don't you? I mean how do you that if you don't 17

have that information? Let me read something to 18

you Voting comity is responsible for evaluating 19

the RFQC draft and vendor proposals. The voting 20

comity will make recommendations in the form of 21

22 an executive summery to the executive oversight 23 comity. Could you expound on that for me please.

24 A: Executive oversight comity is a group of

top level executives from various elements of

a decision on number one whether your going to

do this thing, that would be first. Right? I mean

you evaluate it and see if I'm going to use it and if

it can do the job for us.

A: Yes, generally speaking that would all be

included in the evaluation process.

Q: Okay and then you make some kind of

decision, I guess, and start finding out who can do

it because you want to find out what it is going to

10 cost, and what goes into doing it. Is that correct?

A: Yes, it is.

11

19

Q: Now I understand that Captain Ober 12

played a rather central role in some of those 13

decisions in term of bringing people together 14

bringing information together and making

decisions that insured that this evaluation process

has been done correctly. Am I correct? 17

18 A: Yes

Q: Why was he taken out of there?

20 A: To the best of my recollection the

accusation process had concluded and we were 21

moving to the contracting process. I other words 22

they had selected the appropriate vendor and that 23

part of the project was finished.

98

state government who asked as an oversight to

IIMS procurement. The voting comity was

responsible for evaluating and scoring the various

proposals or submitted and then making a

recommendation to the executive oversight

committee. Concerning witch vendor they believe

would do the best job for the common wealth.

Q: Do you know when the review of the QC

proposals when that began or when that was. 9

10 A: It would have been the Fall and into

winter of 1999 I don't have the exact dates. 11

Q: And if I told you they might be Jan. It 12

might be the process took place in Jan. and Feb.

of 2000. Would that make sense to you? Or would

15 you have some reason to think that might not be

correct? 16

A: I think that the process went into Jan. I 17

believe Captain ober was transferred out of the 18

team in Jan. I'm not certain of that, so I would 19

think that it would have been Jan. 20

Q: But I am not trying to be argumentative 21

22 and I apologize if I sound that way. I think your

23 testimony or your response to on of my questions

is that process was over at least I may have

misheard you.

1 A: That's my point.

2 Q: Could you be in error or was he still

working on that proposal process? My research

indicates he was.

A: I believe that the RFQ portion had been

done and they were moving into the contracting 6

7 phase. I believe.

Q: I answer you are actually providing

information to make a decision on how to spend 9

all that money. Isn't it? Isn't that what it's about? 10

A: Pardon me?

11

12 Q: I Feb. they were going to be making or

trying to make some decisions about have you are 13

going to spend all that money. Who you're going 14

to be spending all that money with? At least begin 15

16 that process of evaluation.

A: The Feb. time frame, if my recollection is 17

correct, is when you would sit down with the 18

vendor that would get the award and negotiate the 19

nuts and bolts of exactly what you are going to be 20

getting for the money your spending. 21

22 Q: And you folks are going to go out and

spend for all tax payers over a hundred thirty 23

million dollars. Is that what you have testified to?

101

A: Yes he has.

Q: Captain Ober has I know acting director 2

BPR but he's been director IAD. 3

A: Yes

Q: Sir is it fair to say that in the PA State

Police that the people that rise to the top career

wise, I'm not saying its iron clad but typically at

least have some exposure or some experience with

9

BPR in one of these two divisions is more

10 common that not? If you know.

11 A: I think your characterization is that it has occurred on a number of occasions I don't know 12

13 whether that's because going through BPR is a

track that would make you more attractive for 14

promotion hire or that we tend to put quality 15

16 people in BPR. But it is not an iron clad and there

are people that have been elevated higher than and 17

18 never gone to BPR.

19

21

23

Q: Well you know FBI agent Kush, now I

20 am not saying that all the folks in the PA state

Police have a high opinion of the FBI. But FBI

agent Kush when I questioned him about why

after they had gone to Western AID and Western crime, organized crime division or group, I don't

quite know how there info structured, but why

A: I testified that I be

2 not been submitted yet by

phase two and my expecta

hundred twenty to hundred

Q: Now remember v

billion here a billion there

about real money. In state

sizable piece of money. Is

A: Yes it is. 9

Q: Okay, say Colon-

years have you been with the PA State Police?

12 A: 29

10

13 Q: A lot of experience. Now you have seen a

lot of times where Captains have been put into

15 Lieutenants positions haven't you?

A: The only one I can recall is Captain Ober. 16

17 Q; 29 years Colonel Hickes, the only

Captain you know that was assigned to a 18

19 Lieutenants position was Captain Darrel G. Ober.

Is that correct. 20

21 A: To the best of my knowledge, yes.

22 Q: So are you, you served as either director

in IAD or BPR haven't you. 23

24 A: Yes, I have.

Q: I know Colonel Evanko has, hasn't he? 25

102

they went up to Harrisburg, made a decision to go

to Harrisburg Captain Ober had IAD at that time.

Okay. Said that because IAD is a cut above, those

are his words, cut above, Is, do you expect that a

higher slandered of performance of professional

responsibility from somebody? I don't know if

Mr. Kush if that is something expected in the

State Police but, he said that was one of their

9 reasons. Because you expect them to be a cut

10 above.

A: I think that all of the PA State Police has 11

a standard that we expect offices to adhere to. I 12

believe that internal affairs you're privileged to 13

14 work there is scrutinized more severely that

15 you're privileged to work in other places of the

department depending upon the integrity issue.

17 Q: And is that because the very very core

issue the integrity of the organization itself, it's

ability to cleans itself, to look at itself, to be

honest with itself. Is at issue in internal affairs and 20

21 investigation.

A: I believe that would be a fair assessment, 22

23 yes.

24 Q: Okay, Your asked questions about this

thing with Indianan, What's wrong with meeting

for the sake of convenience somewhere between Harrisburg and Pittsburgh, meeting at a hotel

about an investigation of this type? I don't,

forgive me but I don't understand what's wrong

2

6

9

10

A: When Captain Ober requested that the authorization to go to Western PA using his own car and on his own time, so to speak, putting in a leave slip, I questioned him about, Did he really feel he needed to do that? That was, was he that

concerned about this that he had to do that? And 11 he expressed that he was he felt that.... (tape end) 12

13 Q: Okay you had said that he expressed concern about it being a work day and... 14

A: That it would raise questions in the office 15 that he really didn't what to have to explain. 16 Based upon his concern and his explanation, I saw 17

18 no problem authorizing him to do what he wanted

to do. After all he's the investigator he's the 19

20 individual who is working this and has the

information and if that's his best estimate of what 21

he should do then I authorize it. 22

Q: And if got to the hotel and you ordered a 23 24 cup of coffee witch is my understanding is that the

FBI ordered beverages Colonel Conley had

105

A: As I said I think I explained that the

2 Commissioners reaction to being informed about

the investigation and the capacity of the 3

circumstances, I sought out Miss Christi to find

out whether in her prospective had used good

judgment and much of anything else to advise her

of what had transpired.

8

9

13

25

Q: Colonel Hickes, your probably a man of uncommon courage. And I don't mean to

10 embarrass you with this question but truth and fact is the commissioner reacted so strongly it 11

scared you a little didn't it. 12

A: A little bit, yes.

Q: All right. So you go to the department lea 14 15 gel beagle and on the 13th to get her advise, interesting waver of privileges by the way, and

16 you asked Barbara Christi in affect did I do 17

something that would subject me to discipline or 18

19 break the law? Is that basically it?

A: I don't think discipline was an issue with 20 my position. But I did want to run the 21

22 circumstances past her and get her take on it.

23 Q: Well. Do you know what obstruction of 24 justice is?

A: Yes, I do.

testified that

there were be

agent Kush ti

was a cup of

up but you ki

ordering a cu

agents? Whe:

something of

of that? 9

10 A: Non

Q: Sir c

12 the end result

grievance pro 13

know what happened there? 14

A: I believe he prevailed in getting that 15

16 reimbursement, but I am not certain.

17 Q: Thank you sir. Now you have been

18 asked, Miss Guido had asked you questions about

a Mark, strike that, Miss Guido had asked you 19

20 about a May 13 meeting 1999 meeting with Barbara Christi, do you remember that?

A: Yes, I do.

23 Q: Why did you go over to see Barbara

Christi?

21

22

106

Q: Now what if you had run up to captain, I

am sorry Colonel Evanko and told him about

investigation and he called the Governors office

and somebody over there calls Joe Preston or

Lenny Bodack because in fact this terrible thing

had some truth to it. Do you think you could

7 through grand jury could have edited you, sir.

8 A: I don't know I am obviously not a lawyer

9 but I would say that it is a possibility.

10 Q: And did you talk with bar bra about the 11 legal ramifications about what you had done or

not done? Your acts or remissions. 12

13 A: Yes, I did.

14 Q: And what did she say?

15 A: She said that based upon the

16 circumstances as I presented to her that appeared

17 to her that I was reasonable in my judgment.

18 Q: Do you know whether and admission of

19 counsel is an admission of party, do you know?

20 A: I don't know.

23

21 Q: You don't know that. Sir in response to 22

one of Cindy Guido's other questions you had indicated that after you talked to Colonel Evanko

that you had, that Colonel Evanko had called

Colonel Coury into the room. Now am I correct?

A: Yes. 2 Q: Now sir is I correct that you had indicated that Captain Ober was in the room at the same time or did I miss something? A: I believe he was yes. 5 Q: You know I am going to ask it is very 6 important what was the conversation after Colonel Coury came onto the room? Take a second or to and think back and tell us everything you can recollect about the conversation. Let me tell you 10 11 what I am looking for I'm looking for whether there was any discussion of investigations any 12 discussions of actions that the Colonel was going 13 to take I am going to assume that this was after he 14 had made the comments about Louie Freeh and 15 about removing the agent or whatever the heck he 16 said. But could you please, after Colonel Coury 17 came into the room what went on? 18 19 A:I have very little recollection of the conversation my recollection is that the 20 Commissioner wanted Captain Ober and I to 21 explain the circumstances to Colonel Conley and advise him whether.... 23

109

24

Q: Conley?

think it was an investigation ant they call it an 1 inquiry. The point is that did they indicate that they had a statement form Colonel Coury about the events of that day? Q: Did show you any statements or read them to you? 8 A: No. Q: Do you know who made the decision, strike that. Do you know who made the decision to select Werts and Williams for this job? 11 A: Not for certain on the 13th with 12 Lieutenant Colonel Coury, Westcott the 13 commissioner and myself there was a discussion 14 about a need to do an investigation and who likely 15 16 investigate towards investigate of was, because I was so deeply involved in the issue that they were 17 18 going to investigate so I did not contribute to that 19 discussion although I was present. My recollection is that there was no resolution at that time and although the name were Williams and or 21 Werts were brought up I don't recall that they 23 made a decision then and there to make an assignment then 24

A: I'm sorry I apologize Colonel Coury, and 2 we did that but as far as any specific dialog following that I don't have recollection. I don't know if he did as you suggesting. Q: Okay. I think we have had some testimony from Colonel Coury that at some point he had done a statement or something for Mr. Evanko about what occurred during conversation where you were present. I must represent to you sir I honestly don't remember if it had indicated Captain Ober being there or not. I'm just not sure My question is did Colonel Coury ever show you a statement or tell you about a statement that Colonel Evanko had asked him to provide about what had occurred during conversation with you? 16 17 Q: So as you sit here today you don't know you did not know until today that ledged that Mr. 18 Evanko had asked Mr. Coury to do a memo about the conversation that occurred on or about 12th or 20 21 13th or whenever it was. 22 A: Correct. Q: When Mr. William and Mr. Werts came 23 to you and inquired of you about this so called investigation, we think it's an investigation, we

	110
1	Q: Have you ever know a Deputy
2	Commissioner to jump in an airplane and to fly
3	off tell a major to go and investigate something.
4	A: No.
5	Q: Do you have a recollection of the
6	conversation to witch you were privy of anyone
7	saying to Colonel Evanko or Colonel you
8	shouldn't do that you don't have the authority to
9	do that?
10	A: I don't I didn't question the
.11	commissioners authority he certain is the
12	Commissioner of the State police he can do what
13	he wants to do, but I did question the value of the
14	investigation as it relates to if he needed
15	information I was available to provide what I
16	knew. But only in the context of that I really
17	didn't
18	Q: Well as commission of the PA State
19	police if he wants to can he call a trouper up and
20	tell him to go and search your house?
21	A: No he can not.
22	Q: If he wanted to can he go outside and get
23	on the telephone and tell a couple of troupers to

come in here a and escort you out and start

questioning you about something? Could he do that? If you know you may not know. A: Within his authority to determine the

circumstances surrounding a legitimate state police process I think he does have broad authority to conduct inquiries. 6

Q: Okay now Werts we know in this case 7 Werts and Williams came in and questioned 8

Captain Ober during this inquire right? Well I can 9 tell you that they did and they read him his rights 10

do you have any facts or any knowledge about 11 how made the decision to read Captain Ober his

rights? 13

12

A: No I don't. 14

Q: Do you know where the inquiry excuse 15 me where the questioning of Captain Ober took 16 17

A: no I don't. 18

O: Wants a supervisory inquiry as opposed 19 20 to a full investigation if you know?

A: A full investigation would be and 21 investigation that bureau of professional 22

responsibilities would enter into or have a

professional responsibility index number that

would determine all the facts. Supervisory I

113

A: No I wouldn't characterize them that 1 2 way.

3 Q: The fact is in the way your tainted in

most the things you do are accounted for by 4

number and memorandum and forms and there

strutted and done according to regulation. Am I

correct?

A: Yes.

O: Well tell me the regulations that govern 9 the investigation of witch lead Captain Ober at 10

least being read his rights. Do you know what the 11

regulations are that govern that? 12

A: I'm not familiar enough with exactly 13 14 what direction they were given to know but no.

Q: Okay. But your belief is as a Deputy 15 commissioner is that the commissioner would 16

have broad powers to investigate things anyway 17

as a part of his job and as a role as a

commissioner certainly that would make common 19

20 sense, right?

21 A: Now..

22 Q: Any chance we could take a five minute

break? 23

24 A: I'm just I don't think I am going to be but Five more minutes if you just want to, hopefully, I would have to look up the definition I can't

distinguish I can't tell you what it is right now.

O: Well you not suggesting to use that the

Commissioners power to go and do all of these

investigations can be done off the books are you?

A: No, I would suggest that it should have

had some reference number somewhere along the

line

9 Q: Right, right. Well do you know when the

inquiry into the facts and circumstances of Oct. of 10

1998 or the FBI whatever this investigative who 11

this preacher was. Okay. Do ever know if it was 12

13 assigned a BPR number?

Q: Do you have a recollection of ever seeing 14

15 one?

A: I would not, no. 16

Q: Well how many investigations like the 17

one of Werts and Williams have you seen in you 18

29 years? You must have seen a lot of them 19

haven't you?

A: I have seen a few I can not say I have 21

22 seen a lot.

O: You say they constitute a practice in the 23

PA State Police?

114

don't know if the other side has any questions so

in fairness maybe we better break.

Counsel: I only have about five or ten

minutes I need it to.

Lieutenant Colonel: Can we just use the 5

6 restroom?

Mr. Bailey: Yes sir. Let him take this off 7

record.

20

VIDEO OPERATOR: 12:14P.M. Off record 9

Mr. Bailey: Ladies and gentleman please be 10

advised that a recording advise is operating. 11

VIDEO OPERATOR: 12:29P.M. tape two 12

back on record. 13

14 Mr.: Bailey: Okay, I think by enlarge I am

probably finished. I had a few little follow-up 15

16 questions, maybe Cindy if you want to finish up

now. I may even dispense based on the interview 17

that you did with Major Werts and Williams. It 18

19 was both of them are that correct?

A: That's Correct.

Q: That's it for right now. Let me just run 21

over this very quickly. I don't think I am going to 22

23 have any more. Do you want to go ahead Cindy?

24 Counsel: Colonel, Mr. Bailey was asking

you about a change to AR-1-1 and whether or not

you had signed off on the routing. I would like you to think back to a year ago. Do you remember 2

Captain Brown providing you with copy of the

routing slip and the change sheet, and the

regulation of 1-1, for you review?

11

A: I was interviewed by Captain Brown relative to that. I don't have specific recollection 8

O: You don't remember if he showed you a 9 copy of the change sheet? 10

A: He did I believe but again I don't recall.. nothing stands out in my mind about it. 12

Q: So as of that date of that interview 13 14 though the change sheet did exist already?

A: I don't recall. He showed me something I 15 can't say specifically what it was. 16

Q: Okay. And if your initials are on the 17 routing sheet with the date what would that mean? 18

A: Well that means that's the date that I 19 reviewed a signed off. 20

Q: But the change that we've been talking 21 about and Mr. Bailey had asked about significant 22 changes, there was nothing so significant to the 23 change that it sticks out in your mind today? 24

117

Q: No when the, Captain Ober came to you and talked to you about the FBI's investigation 2 when you just became a Lieutenant Colonel did 3 you have any reason to believe that Major Conley 4 the new director of Bureau of Professional 5 Responsibility would be a target of the FBI 6 investigation. 7

A: The information at the time was so sketchy as to not really have any idea exactly 9 what the FBI was investigating or that there was 10 any target if you will of that. So I've got to 11 answer almost the neutral in that there was not 12 target or not target. 13

Q: Did Captain Ober happen to mention to 14 you that now Lieutenant Colonel Conley but then 15 Major Conley at when you became director of the 16 Bureau had already before Captain Ober came to 17 take to you about this had already contacted 18 Captain Ober as director of IAD and asked him 19 whether or not there was anything significant that 20

21 he should know about.

A: Not that I recall. 22 23 O: And as the director

Mr. Bailey: I want to place a very strong 24

objection on the record there. I don't know if I 25

119

A: No there's nothing, it doesn't sick out in

my mind today. And as I said as it comes through 2 me for approval if there is something that I would

look at and say wait a minute what's this all

about, I have the opportunity at that point to

question either through Major Maryman he's the

director of the bureau of research and

development, where did this thing come from, I

don't recall doing that.

Q: With respect to Captain Obers request to 10 be considered for Legislative liaison position 11 there was one part of you answer that I was 12 unclear about as they brought it up. And I just 13

wanted to clarify. You said that you past that on to 14

Commissioner Evanko. 15

A: Yes.

16

20

Q: Do you remember I a guess from a 17 logistical physical perspective how that occurred? 18 Whether you spoke to Commissioner Evanko you 19

put it in his in box you put it in interoffice mail... A: I don't recall. 21

22 Q: Do you remember ever talking to Colonel

Bago about it? 23

24 A: No, I don't recall.

118

understood what counsel said but I do not have a

record of that characterization at all. I could be

mistaken but I place an objection.

Counsel: Now, I'm side tracked, Alright as director of the Bureau of Professional

responsibility it wouldn't be unreasonable for

Major Conley to want to know about something 7

8 like this would it.

9 Lieutenant Colonel: no, it would not be 10 unreasonable for him to want to know about this.

Q: And did you know that one of the main 11 reasons that the FBI contacted Captain Ober in 12 addition to needing some logistical information 13 about the process is that one of main reasons they 14

contacted him is because they felt that PA State 15

Police's Bureau of Professional Responsibility 16

should know that there were members of the State

police that were possible involved in this kind of 18

corruption. Did you know that? 19

20 A: I'm not sure what you're asking. My 21 assumption would be that's why they contacted

Captain Ober to let someone in the PA State 22

Police know about this. I did not know that they, 23

If it were their intent that more people would be 24

known of this. 25

l	Q: Okay I guess where I was going then
2	previously when I was asking you questions you
3	said that it was you understanding that the reason
4	that Captain Ober was contacted was so that they
5	could get some investigative help and find out
6	how the process of getting into the academy
7	works. So what I was asking you is whether you
8	knew that in addition to that one of there primary
9	reasons was to make sure that the Bureau of
10	Professional Responsibility had this information
li	and investigate if they sought fit.
12	Mr. Bailey: I object. I strongly object
13	counsel to what you're doing in characterizing in
14	testimony. You can ask a direct question if he
15	knew something. What your doing is presenting
16	the facts scenario and implying to him that the
17	FBI had this reason. And I don't believe that
18	that's correct. I disagree with the characterizing
19	and strongly object to the form of the question. Ir
20	fact it's not even a question.
21	Counsel: That's fine the FBI testimony
22	speaks for it's self. I been patient while you have
23	done very similar questioning. So
24	Mr. Bailey: I was delighted with the FBI's
25	testimony. I am just asking, absolutely delighted

1	Counsel: with that response your answer
2	brought me too another thing I wanted to ask you
3	because I want to make sure that I understand
4	your responses to Mr. Baileys question, at what
5	you had just now mentioned that you believed that
6	they have requested confidentiality and that there
7	not going any further. In response to one of Mr.
8	Bailey's questions you seemed that you were
9	saying that even if the FBI had not requested
10	confidentiality and even if you know lots of other
11	people knew in the State Police about this that you
12	would have still done the same thing. Is that right?
13	Mr. Bailey: Sir please don't say anything I
14	strong, counsel you are mischaracterizing you put
15	an add on in there this is wrong to do this. You are
16	abusing this witness's rights.
17	Counsel: I am not abusing anyone's rights.
18	Mr. Bailey: You are characterizing his
19	testimony and then you arte also telling him what
20	his response was. And that's
21	Counsel: then he can correct me if I am
22	wrong, But your objecting is on the record and I
23	would like a response
24	Mr. Bailey: Well he is your client you told
25	us.

1	with it, but I'm just asking if a direct question
2	could be asked. That's all.
3	Counsel: I think I did ask a direct question.
4	My question is did you know, I was trying to
5	clarify because earlier today you had said you
6	thought the reason they contacted - about the
7	process and asking if you knew that there primary
8	motivation was because they wanted to make sure
9	somebody, that the Bureau of Professional
10	Responsibility, they kept calling it OPR but it
11	would be the equivalent to our BPR knew about
12	it.
13	Mr. Bailey: I repeated my objection, you
14	may respond.
15	Lieutenant Counsel: My information is that
16	they contacted the Bureau of Professional
17	Responsibilities so that someone in the State
18	Police would know, I was aware of that. I also
19	believed that they had requested confidentiality
20	that it not go beyond that point until they had
21	concluded their investigation. They did not, my
22	understanding of the time they were not asking u
23	to assist them in an investigation simply to
24	provide information and

	122
,	Council I would like a reamone
1	Counsel: I would like a response.
2	Mr. Bailey: I don't believe that, that was his
3	response, I very strongly object to what you are
4	doing. Thank you.
5	Counsel: Do you understand where I am
6	going?
7	Lieutenant Colonel: No, I am lost now.
8	Soand one question at a time
9	Counsel: My understanding of what you
10	said, and that is what I am try to clarify make sure
11	I understood what you said.
12	A: Okay
13	Q: Mr. Bailey as I understood it was asking
14	you another words first you had said that it was
15	your understanding that the FBI had requested the
16	confidentiality.
17	A: Correct.
18	Q: And the way I understood Mr. Bailey's
19	question witch the record will speak for itself later
20	but the way I understood his question was, but
21	even if they hadn't wouldn't have still been the
22	same, to witch I believe you said
23	A: Let me answer that one, If they had not
24	requested confidentiality and yet all of the other

25 information that Captain Ober had brought to me

- was it that's all I've got then my answer would
- have been the same that in light of the fact that
- they were investigating a public corruption case in 3
- Western Pennsylvania in light of the fact that this
- was there investigation and that they had not
- asked us for assistance and in light of the fact that
- the term Colonel had been used I would have said
- we need to maintain confidentiality here we need
- to look out for the integrity of the PA State Police
- so tell no one about this. Now the next question 10
- 11 please.
- O: Now if we add in the factor, Because that 12
- is what I wasn't certain about if you were talking 13
- this into consideration also, If you add in the 14 factor that the FBI had already contacted other
- 15 16 members of the State Police about the
- investigation and sot there input, advise ext... 17
- about it, would that make a difference? 18
- A: I think that changes the equation. Clearly 19
- if the FBI, if you have that information you can go 20
- back to the FBI and say who all did you tell? And 21
- once from the source and you find out that they
- have told X Yand Z I think that at that point you 23
- say well this information is out in the private 24
- domain in the agency domain and I can't control

- A: Yes, a supposed to Miranda I'm not sure
- if there is a consistent policy or not on whether 2
- you do or don't I've been out of BPR for way too 3
- long to have any recollection of that nor do I
- know of there current practices.
- Q: But the administrative warnings, tell me 6
- if this is correct don't they, as part of the
- administrative warning, don't you actually tell the 8
- member of the State Police that anything they say 9
- wouldn't be used against them in any criminal 10
- proceedings? 11

24

- A: My recollections is that an administrative 12
- warning is based in a legerity decision that the 13
- fabricates the criminal and the administrative 14
- process and so legerity decisions if you get that 15
- warning your warned that you must tell the truth 16
- or suffer the consequences of loosing you job but 17
- what you say can be used against you criminally. 18
- 19 Q: And I don't remember if you said this in
- response to Mr. Baileys question but if the ad.., I 20
- don't remember whether you said Captain Ober 21
- was or was not aware the fact that FBI 22
- investigation actually dated back to 1994 or 1995? 23
 - A: I have no knowledge of that

- who does or doesn't say anything about it. The
- way you keep a secret about it is tell no one. 2
- Hence that drove my decision at the time. But if a
- lot of people know then your not going to be able
- to keep a secret and that certainly would have
- been part of the decision if I was aware at the time
- this had been out there.
- Q: Okay, that was the part I was confused
- about. Now do you know whether or not Captain
- Ober made any effort to find out if there were 10
- other people in the State Police had this 11
- 12 information.
 - A: I don't know.
- 14 Q: And he didn't say anything to you about
- 15 that.

13

- A: No 16
- Q: And in response, Mr. Bailey was asking 17
- some questions about whether or not you knew 18
- anything about Captain Ober being read his rights 19
- during the investigation. Just to clarify that it's not
- unusual to give a member of the State Police their 21
- administrative warnings when there interviewed is 22
- 23 it?

2.5

- A: I don't know. I.... 24
 - Q: Supposed to Miranda?

- Q: Okay. So you did mention something
- about that later so I wasn't sure what you were
- 3 saying.
- A: He did indicate to me that they had been 4
- investigating a public corruption and that this had
- come up and they had allowed it to lay dormant
- until they finished the larger segment and then
- they were ting up loose ends. But I do not have
- 9
 - any knowledge of what date this was all
- 10 occurring.
- Q: Now if there had been any truth to this 11
- witch fortunately it turns out nobody was doing 12
- this. At least, if there had been any truth in the
- allegations dated all the way back in 1994 and 14
- 15 1995 if it involved in the command staff you
- could have been the only person that could have 16
- been involved at the command level, previously 17
- when it first started. 18
- A: Correct, I would be one of the two people 19
- 20 left and employed in the department that who
- would have been Lieutenant Colonel at that time 21
- Major Robert Inssole is the Director of Bureau 22
- training of education and he was also a head 23
- Colonel of that administration

Q: So as far as the Lieutenant Colonels and

2 Colonel Evanko who were in place at the time of

this information came up none of them could have

4 been involved as a Lieutenant Colonel back in

94/95.

6

A: 94 correct 95 I believe that they came

into office of Feb. 1995.

Q: Okay. So later in 95 they would have.

9 A: After Feb., yes.

10 Q: Okay. I have one more thing in following

11 something Mr. Bailey was asking you about the

12 different people I had asked about were Colonel

13 Evanko the first person that you told about the

14 FBI investigation?

15 A: I believe I informed Miss. Woley ever so

16 slightly before the Commissioner in the matter of

17 days.

20

18 Q: Okay. In a matter of days would that be

19 weeks days, would it be less that a week?

A: I would say less that a week.

21 Q: Okay. One seconded. I think there might

22 be.... Okay that's all I have.

23 Mr. Bailey: Well your going to be leaving

24 here in just a brief period of time. What

25 conceivable or possible advantage could Captain

129

A: Many times.

Q: And no matter what you do there's no

3 way to win. Let me ask you this do you think that

4 Colonel Evanko would have been happy if

5 Captain Ober would have gone and reviled this

6 investigation?

7 A: I don't know whether he would be happy

8 or not.

9 Q: Your view that Captain Ober and indeed

10 yourself because he put you in the soup when he

11 told you had at least some concern about

12 obstruction. If indeed you revealed this

13 information and it turned out to be even and

14 implication of complicity by someone in the from

15 office.

16 A: That thought did cross my mind yes.

17 Q: Colonel Hickes do you have a duty did

18 you take an oath of office?

19 A: Yes, I did.

20 Q: Is you duty to the constructional law

21 above your duty to the people and persons?

22 A: I would have to look at the oath again, I

23 heart it often enough, but generally it's to the

24 constitution and the law, and...

Ober have gleamed as you look back on this? If

2 he had purposely not informed Colonel Evanko

3 and what could he possible have gained from it?

Lieutenant Colonel: I have never been able

5 to rationalize that there would be any advantage to

6 that.

11

16

7 Q: And what yourself. What possible

8 possible advantage could you have ever gained

9 from with holding something that you knew

10 would come to his attention eventually?

A: No advantage at all.

12 Q: Is it fair to say that there is even some

trepidation that attaches to having this informationand not want to have the responsibility of holding

15 it close to the breast so to speak.

A: That would be a correct assessment.

17 Q: So there was absolutely no intention

18 known to you, no intention on you part no

19 intention on Captain Obers part to hurt or injure

20 the commissioner or the front office in any way

21 A: Well there was no intention on my part I

22 can't fathom a motive that Captain Ober might

23 have. I can't speak for him.

Q: You ever been between a rock and a

25 hard place Colonel?

130

Q: Is it fair to say that loyalty to the leader

2 secondary to loyalty to the law and your ethical

3 responsibilities.

4 A: I think that is certainly how the oath

5 reads. I don't believe that the oath puts the

6 attributes of values into that.

7 Q: All right now when colonel Coury

8 testified he talked about a culture. I think he had

9 indicated that he would have gone to Colonel

10 Evanko. Because there is a culture. I think that's

11 out here in the private sector we call it the blue

12 line. The press calls it the blue line. Do you have a

13 culture in the PA State Police to disregards the

14 law if necessary and display loyalty to your

5 leaders above you ethical and and legal

16 responsibilities?

17

Counsel; Alright Counsel, I do have to

18 object. If your talking about Colonel Coury's

19 deposition. I don't recall anything and again we

20 will let the records speak for itself but since we

21 seam to be debating about people miss

22 characterizing deposition testimony I would just

23 state for the record I recall no testimony Colonel

24 Coury in the deposition that we would have been

able to indubitability to date. Indicating that there

- was a culture to, with you would be enforced to
- report things. I recall a number of other things that 2
- Colonel Coury said that one was investigative in 3
- field experience we do to further pursue this mater 4
- 5 but again I don't witch to prime this question but I
- do object to you priming that question. Based
- upon what I do not recall, being in Colonel
- Coury's deposition testimony.
- Mr. Bailey: And as a curtsey to you. I will 9
- withdraw the question and ask it this way. Do you 10
- know if Captain ober violated a culture? I had 11
- asked Colonel Coury what Captain Ober did 12
- wrong. He didn't say he knew of any regulation. 13
- That's true he's not going to disagree with me 14
- about that for law Captain Ober broke. But he
- violated a culture of the state police. Well let me 16
- ask you know it captain Ober violated a culture 17
- quote unquote of the PA State Police? 18
- Counsel: That's the same question you just 19
- withdrawal. And counsel now your going to ask it 20
- again? 21
- Mr. Bailey: No no it's very different. 22
- Counsel: My objection as to the form of the 23
- repeated question. For the reasons I stated earlier.
- That I don't want to repeat.

- Lieutenant Colonel: And my response to the 1
- 2 question was based on the culture loyalty as
- opposed to anything else. 3
- Mr. Bailey: Well let me ask you about 4
- anything else you shouldn't have said anything. I 5
- might not have remembered the question. But you
- did so. What regulation did he violate?
- Lieutenant Colonel: I didn't know that he 8
- did. 9
- O: What law did he violate? 10
- A: I don't know. 11
- Q: If he violated a regulation should he have 12
- been punished for it? Should he have been 13
- disciplined for it? Strike that. If you violate a 14
- 15 regulation should you be at least be counseled or
- disciplined for it? 16
- A: generally speaking that is one recourse 17
- that you can take, there are... 18
- Q: Well you could ignore it couldn't you? 19
- A: Correct. 20
- Q: Of course. Now if a trooper violates the 21
- criminal laws of the common wealth does the PA 22
- State Police have a duty ad responsibility to the 23

- state and to our citizens to investigate and 24
- prosecute that misconduct?

- Mr. Bailey: I don't want to keep you here
- and waste anybody's time. But I don't think I
- repeated the question at all. I am going to ask very
- simply. I think we have been able to establish in
- these depositions I think anybody would be
- foolish to disagree that there have been no
- violation of regulation or law by captain Ober. My
- question is as I put it to Colonel Coury, my
- question is did Captain Ober violate a culture a
- value of the culture of the PA State Police in what
- he did. And did you? That's going to be my next 12 auestion.
- Lieutenant Colonel: Not that I am aware of, 13 to both. 14
- Counsel: Just one thing I like to put on the 15
- record to your last question just to say that, when
- you said that nobody in the room thinks that 17
- Captain Ober violated any regulation of the State 18
- Police that's not the defendants position. The 19
- defendants position is that he did violate 20
- regulations of the state police. So I just wanted to 21
- say without any implications there. Just for the
- 23 record.

134

- A: I would say that that we have a duty to
- investigate and present to the district attorney for
- prosecutorial decision. I would agree with that.
 - Q: Your correction is well stated. It would
- be to investigate and provide information to a
- proper prosecutorial authority to deal with. Right?
- A: Correct.
- Q: How do you spell Standons name?
- A: I believe it is STANTON but I am 9
- not positive. 10

- 11 Q: Okay. Do you remember this question on
- page six, the interview of Lieutenant Colonel
- Robert Hickes on July second on July 2, 1999. 13
- (Hickes: ask that again please; Williams: Sure in 14
- any conversation you had with Commissioner 15
- Evanko did either you or Captain Ober ever tell 16
- him that the allegations of influence were not specific as to a Colonel in the PSP or someone in 18
- the Governess office but rather that the trooper 19
- claimed to have contacts with high ranking 20
- officials in the agency and the administration.) Do 21
- you remember that question? 22
- 23 A: Not specifically but...
- Q: Does that question seem to say that these 24
- two fine majors who did this fine investigation

1	learned that in fact there were some allegations
2	against some higher ups in the agency and higher
3	ups in the Governors office. Is that the way you
4	took that?
5	A: I'd have to read that again but
6	Q: It speaks for itself. It certainly does. And
7.	I don't have any additional questions for you sir.
8	And I would like to express my part and my
9	clients part in gratitude in coming here to
0	answered questions. Thank you.
1	Counsel: That's all I have.
12	Mr. Bailey: It's there till they shut it down.
13	VIDEO OPERATOR: 12:52 P.M. this
14	deposition is concluded.
15	
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17	
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19	
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IN THE UNITED STATES DISTRICT COURT FOR
              THE MIDDLE DISTRICT OF PENNSYLVANIA
2
                             ICIVIL ACTION LAW
   DARRELL G. OBER
                 Plaintiff
٥
                             NO. 1:CV-01-0084
10
11
             VS.
12
   PAUL EVANKO, MARK
13
    CAMPBELL, THOMAS COURY
14
15
   JOSEPH WESTCOTT.
   HAWTHORNE CONLEY,
16
                             )(JUDGE CALDWELL)
17
             Defendants
18
   VIDEO DEPOSITION: ROBERT DANE MERRYMAN
19
             February 25, 2002
20
   DATE:
             4311 N. 6TH STREET
   PLACE:
21
             HARRISBURG, PA 17110
22
23
    APPEARANCES:
24
             JOANNA REYNOLDS ESQ
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32
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identify themselves for the record, it makes our transcription easier and will also lead them prepare official address and if 2 they can, phone number down please.

3

Reynolds: My name is Joanna Reynolds; I am the Assistant Counsel with the State Police. I represent the Defendants in this matter. My address is 1800 Elmerton Avenue, Harrisburg, Pennsylvania 17110. And the business phone is (717) 783-5568.

Christi: My name is Barbara Christi, Chief Counsel for the Pennsylvania State Police and the business address and 10 11 phone number are the same as given by Assistant Counsel, 12 Reynolds.

Bailey: 13 Thank you very much. Let the record show that the Commissioner of the Pennsylvania State Police. 14 15 the Honorable Paul Evanko is present here with us today. Okay, Major Merryman, this is hopefully going to be a relaxed 16 deposition. I like to run my depositions that way. I do things 17 18 a little different than some other lawyers do. I'm going to very, very quickly over with you what we are doing here. 19 First of all, this is a video deposition and that means that if

you want to at any, you have a right to come to this office, I

21 22

have a duty to maintain a copy of the video and you can come and you can view. If you have any desire to purchase the

video for individual use or what not; you can check with 24

Crystal and work it out with her. And your counsel can also.



Lyde: Good morning ladies and gentleman please be advised the video and audio is in operation. My name is Crystal M. Lyde. My address is 4310 Hillsdale Road, Harrisburg, Pennsylvania 17112. I have been contracted out by P. R. Video to be the operator for this deposition. The case is in the United States District Court for the Middle District of Pennsylvania. The caption is Daryl G. Ober versus Paul Evanko, Mark Campbell, Thomas Coury, Joseph Wescott and Hawthorne Conley. The docket number is 1:CV-01-0084. The date is February 25, 2002, the deposition is being held at 11 the Law of Office of Don Bailey, 4311 North Sixth Street, Harrisburg, Pennsylvania 17110. The video deposition is 12 being taken on behalf of Plaintiff, Daryl Ober. The witness' name is Robert Dane Merryman. The time is 9:06 a.m. Mr. Merryman will you raise your right hand for me please? Will state your name for the record and spell it? 16 17 Merryman: First name Robert. Middle name Dane. 18 Last Name Merryman, M.e.r.r.y.m.a.n. Lyde: Do you so swear to tell the whole truth, nothing 19 20 but the truth, so help you god? 21 Merryman: I do. 22 Lyde: Thank you. Mr. Bailey, may I have a sound check around the room, please? 23 Yes, my name is Don Bailey; I'm attorney 24 Bailey:

for the Plaintiff, Daryl G. Ober and if we can have attorneys

It's important during the deposition that not gesticulate. I know a little bit of you and I know that you are very

professional so, I don't think these kind of things are going to

be a problem, you know keeping your voice up and

articulating answers as opposed to gesticulating answers.

From time to time should I commit the error of either

commenting or bringing in another question before you have

an opportunity or introducing another question before you

have an opportunity to finish? I want to make sure that you

correct me and stop me and get your complete answer down. 10

It's very, very important that you answer fully and completely 11

12 as well as accurately and I am sure you're aware of that. From

time to time, if you do need, if you want to break, you want an 13

opportunity to talk with your attorneys, normally during a 14

15 deposition there's not an interruption while there is a question

on the table, but I don't really care; if it serves your needs or 16

you have some reason to ask a question, that's fine, but that 17

18 should be with counsel only. It should not be with another

witness or a party, okay. The other thing I do just a wee little 19

bit different, I don't mind if at some point, I think it develops a

better fact record. If at any point you feel that you would like 21

22 to get a, some kind of an offer from me; where I am going

23 with questions. I would like to do that because it just saves a

24 lot of time. I want you feel free to ask me what I mean by a

question, where I am going with a question, what I mean by a

- group of questions from time; for example, I may change a
- 2 direction on a group of questions and when I do that I will
- 3 give you a little of what's called an offer so, that you have
- 4 some idea where I am going and what I want to get at. Okay.
- Merryman: That's fine.
- 6 Bailey And if you ever get curious you just ask
- 7 me. I don't mind. Most attorneys, they don't like being
- 8 questioned by witnesses, but I don't care, it's okay. That
- 9 being said, do you have any questions for me before we
- 10 begin?

- 11 Merryman: No, I'm ready to go.
- 12 Counsel: I assume we are going to reserve
- 13 objections, except as to form for trial.
- 14 Bailey: Very good. Also from time to time during
- 15 the deposition, an attorney may place an objection on the
- 16 record. 99.9 times out of 100 that's going to be, it's going to
- 17 refer to a stipulation that we have, I assume for this
- deposition; that is objections, exceptus to the form of question
- 19 where there may be some dispute and usually those get
- 20 resolved. The objections will be reserved until time of trial. If
- 21 we do otherwise, you know you have to get somebody to rule
- 22 on the objection and you'll never get down with the
- 23 deposition, so that may occur, but it's typically someone will
- 24 say objection. I may even object to answer and then just say

5

- A: Yes I have.
- 2 Q: And is the title Director?
- A: Yes, it is.
 - Q: What position did you hold previously?
- 5 A: I was Director of the Bureau of Professional
- 6 Responsibility.
- 7 Q: Commonly known as; referred to the acronym
- 8 BPR?
- 9 A: That's correct.
- 10 Q: I understand BPR is divided into two divisions.
- 11 Is that correct?
- 12 A: Yes it is.
- 13 Q: One of them is what, inspections?
- 14 A: Assistance and Process Review, which is in fact,
- 15 inspections.
- 16 Q: Assistance and Process Review. And the other
- 17 one is?
- 18 A: Internal Affairs.
- 19 Q: All right, I am going to have questions for you on
- 20 the Internal Affairs Division and that is generally
- 21 referred to as IAD?
- 22 A: Yes
- 23 Q: All right. How long in the fall of 98 had you
- 24 been the BPR Director?



- 1 you may respond and you just go ahead. I assume he's
- 2 represented by you folks here?
 - Counsel: Um hum.
- 4 Bailey: Okay, so then you just do whatever they
- 5 tell you to do.

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- Merryman: Okay.
- Bailey: Okay, that makes it a lot easier.
- 8 Q: Major Merryman, how are you. Do you have any
- 9 particular way you want me to refer to you?
 - A: Whatever works for you, I'm fine.
- 11 Q: Okay. Major, how are you employed?
- 12 A: I am a member of the Pennsylvania State Police.
- 13 O: And where are you employed?
 - A: I am the Director of the Bureau of Research and
- 15 Development and that's in Department Headquarters.
- 16 O: All right, and now I am going to have some
- 17 questions today about that area and some of the things that you
- 18 do there. The second. When did you become Director of
- 19 Research and Development?
- 20 A: I believe it was in September of 1998.
 - Q: And you...
- 22 A: I'm not really great on dates and I don't have
- 23 them written down, but I believe that's when it was.
- Q: Okay, now have you been continuously Director
- 25 of R & D since then?

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- A: I was there, I believe, just short of two years,
- 2 again, I am not sure of dates, but it was the neighborhood of
- 3 just under two years when I left. In the fall of 98.
- 4 Q: Okay. Now, I'm going to give you some more
- 5 specific questions later, but I am going to ask you some
- 6 questions now that have to do with the procedures and the
- 7 process of how complaints would come to IAD. How they
- 8 were treated procedurally in IAD. For example, one of the
- 9 material issues in this case that I want to question you about is
- 10 a word called Administrative Inquiry. We have had testimony
- 11 for example, from Captain Ober that there is no; and I am
- 12 going to question you about this; that's there no such technical
- 13 thing. That its sort of a morphosis thing that's referred to, but
- 14 there's no, and I need to get some more definition to that for
- 15 the record. So, I am going to start there and then I am going to
- 16 go into some specific questions that might bear on the current
- 17 litigation. Before we do that, have you ever had an
- 18 opportunity to review at least a Complaint in this case or the
- 19 Amended Complaint to at least read it or review it at all?
 - A: I don't recall that I did.

- 21 Q: Okay, let me go back now to the issues with. An
- 22 Administrative inquiry, I have looked through PSP
- 23 Regulations and what not. Is there an official thing called an
- PSP inquiry that is governed by regulation or substance being
- 25 governed by regulation or procedures?

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- I don't I'm familiar with any defined term of that 1 A٠ 2 nature.
- If in the Pennsylvania State Police, now I am 3 O: talking generically here, I am not talking about anyone's case here. In the Pennsylvania State Police, lets be hypothetical 5 and say that Colonel is unhappy with something and he therefore wants IAD to look into it; how does he initiate that process. Again, my understanding is from prior testimony in 8 this case, it is supposed to be by written complaint. If there's not a written complaint. So lets save our time with that one. 10 Let's assume a written complaint comes to you and I'll ask 11 you some questions there. Can you initiate through IAD, an 12 investigation just verbally on verbal words? 13
 - The way of administrative regulation that defines the process for BPR and how investigations and their processes are initiated and how that whole thing works, defines it and those procedures really depend on the initiation through a written complaint. We have allegations of misconduct and that's the process for looking into.

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Q: So, if one is initiate a complaint process; that complaint process through IAD is supposed to be based upon a written complaint. That's supposed to be in the record whether it's anonymous, whether it's from somebody outside, somebody inside; whatever it may say. It's supposed to be initiated by and maybe complaint not even the right word, but

- everyone that was involved in the process. So, we didn't lose anything between the cracks and we didn't have people that were making frivolous complaints against department personnel because it was easy just to call up and make a verbal complaint to someone.
- Would that also prevent off the book investigations? I mean investigations, if one is going to conduct an investigation and read people their right and do those kinds of things, it should be based on established procedure and not just on whim or caprice? Is that fair to say?
- I have to go back to my experience again, and say that while I was there, we paid strict attention to the process and by following a process and by following written regulation, we ensured integrity in that process and there's accountability for everyone that works in the Internal Affairs Division and in the Bureau and it really ensures that the complaints were legitimate complaints.
 - Who assigns investigators? O:
- The general rule to who gets assigned to do what investigation would be the Director of IA, but there are three sections in that division and each section has commander so. there would be involvement of a section commander on who amongst his immediate staff might have the investigation, I suppose it's not outside the realm, the possibility to think that the Director of BPR might make an assignment that is

at least some kind of writing that is a form that referred to that 2 used as the basis of the process? Am I correct?

- In my experience the only time we looked into any kind of allegations, that investigative process was initiated through a written complaint.
- So, if somebody called you up and said, Major, or Director, whatever. I want you to investigate somebody. What would: first of all, did that ever happen to you?
- I don't recall that ever happening to me. If I could clarify that, sometimes verbal complaints are made and 10 we had a reception form that we would fill out, but we had a complaint verification process that is provided for in the 12 regulation so we would take that reception form, we would provide the complaint verification form to that person who 14 was making a verbal complaint and ask them to write that
 - I understand you're not a lawyer, but what's the reason for that? Is there a due process reason for that or is this a way to keep control of an investigation or is it a concern for people's rights? What's the reason for doing it procedurally that way?

down and sign it and resubmit it to us.

I was not in the Bureau at the time that practice was initiated so I can't really talk with great authority about the reason that was implemented, but I always looked at it in terms of maintaining integrity of the process, accountability of

- particularly high profile or sensitive complaint investigation as well. So, I guess I am saying that here you might have a
- general practice, but you also have involvement from section
- commanders and the Bureau Director as well.
- Have you ever assigned investigator in a case before the case was docketed or given a BPR number?
 - A: I can't...
- 8 Let me tell you were I am coming from. I would imagine. I don't want to provide any implications as to really, 10 I don't want to testify; but I would imagine you get a phone call or an inquiry or if you get a complaint initiated by writing, 11 a normal thing that comes in, maybe from a citizen out there 12 about something. That there is some kind of an initial 13 evaluation process that is done? Is that fair; I mean I don't see 14 how anything could ever start without that. Is that fair to say? 15
- 16 Yes, because some of them are obviously, 17 without merit. Some of them may represent a supervisory issue between a member and their immediate supervisor or that type of thing, so you make some determinations about the allegations to determine the course that you are going follow 20 21
- Because you have. Roughly how many BPRs are 22 23 launched? Officially launched in a year? 600-1,000? 700, 24
 - No, I really don't know at this point.



Can't tell. So, a decision is made. You have to make a decision because you don't infinite resources I assume, so, you got to look at whose available, who's doing what; and you have to make a decision should this thing go forward. Is that right? I mean if you get an inquiry of some sort, the initial thing is should we give this thing a number and go forward. Is that correct?

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- There is some consultation that occurs with the, A: like Trooper Commander, for example, if it was somebody from a troop and you know you talk about and you apply certain criteria. If this is true, is this a disciplinary type issue or is it a supervision issue, those types of things.
- Let's talk about that. A hypothetical situation, something comes to you; you're the Director and you look at that; let's say on its face. I was driving down the highway, trooper X came up, he was chewing bubble gum. This is outrageous. It's bad for our teeth and I would like you do something to discipline this guy. Possible something like that might be frivolous or the kind of thing that you send a polite response back to the citizen or whatever, but I would assume by regulation there's not a whole lot you can do except say don't chew gum or you know say something maybe. Another case, I saw your trooper the other day and he was, let's say there's some really outrageous or egregious conduct and he was in badge and the kind of thing, let's say where there's an

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- Affairs, who is a key player in that scenario. As a Bureau
- Director, I would expect to be aware of it and if it's a high
- profile incident, you know certainly briefed periodically. The
- Director of the Internal Affairs Division plays a key role there
- in terms of initiating the investigation, getting an investigator
- assigned through the section of command and getting the ball
- rolling on the case
- - O. Who assigns investigators?
- I think we talked about that? Again section commanders division directors. 10
- 11 Let me do this, let me go back because your quite right. Let me attack that issue because its an important one in 12 this case, I believe; from a different angle. Aside from the bureaucracy responsible, the jurisdiction, which is in BPR, 14 who can assign investigators? Let me do it this way. 15
 - A: Okav.

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- 17 Can Colonel Evanko assign investigators to go out and investigate somebody if he doesn't like something? 18
- I would say that is not in the scope of AR425, 19 which is our regulation that defines the internal affairs 20 21 process.
- 22 That's the way I read it. If. On the other hand, if Colonel Evanko has a complaint about something or about 23 someone, again I just draw from my Army experience 24 somewhat and from reading; because most of these things are 25

- accusation that he beat somebody up or something like that,
- He or she beat someone up. Aside from all of the other
- investigations involved, I assume in that case if you got a 3
- complaint maybe from a commander, from a fellow trooper,
- from a superior or that sort of thing your going to say hey,
- these are serious allegations, here. We got to look into that. Is
- that fair to say? A:

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- Okay. What happens in that serious case? What O: 10 do you; it comes through the door, it comes to you by, its initiated quite properly by some sort of written complaint. 11
- What do you do in the process? How do you handle that? 12
- Well, in the example you used, Mr. Bailey, you 13 included criminal conduct... 14
 - Okay, let me take that out of there. Let's assume that its not criminal conduct, but it raises a serious question of insubordination or something of that sort. It's not otherwise criminal. What would you do?
- Okay, the scenario as I understand it described as A: 19 a case of serious misconduct coming from a credible ranking individual within the department? 21
 - Q: Yes sir.
- First of all, I need to know if I am responding as a 23 A: Bureau Director or who responds in that scenario because in
- the chain of command we have the Director of Internal

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- modeled pretty much together in these kinds of organizations.
- He should report to the proper internal source or bureaucracy, 2
- the jurisdictional area like BPR and say I'm making a
- complaint about something. He shouldn't because of his
- position, as I understand it; he shouldn't control the
- investigation? He should not control the appointment of
- investigators and I'm going to ask you questions about
- adjudication in a few minutes. So, my question is a very, very
- simple one. Does a commander at any level in the
- Pennsylvania State Police have the authority by Pennsylvania 10
- 11 State Police regulation to select and appoint investigators 12 surrounding internal affairs?
- A: I have to go back to the regulation for me that's 13
- been the guiding principle for me and all that I have done and 14
- it provides for a very specific procedure in the internal affairs process. I would say that anything that occurs through the
- 16 17 internal affairs process needs to follow the provisions of that
- 18 regulation. If it's outside of those provisions, then I would not
- consider it an internal affairs process. 19

- 20 Okay, in other words, the regulations of the
- Pennsylvania State Police, neither the regulations of the 21
- Pennsylvania State Police or the custom practice and usages in
- the Pennsylvania State Police as known to you provide for a 23
- commander or supervisor at any level going off on their own, appointing investigators and having people investigated



without going through; without conforming to the regulation? 2 Is that fair to say?

- A: I'm not aware of any procedure or process as you 3 just described, sir.
- Okay. When in the process of an. I'm going to speak generically in investigations. I have to assume that б there are a lot of investigations or inquires that don't make it to a BPR complaint where for example, nothing prevents a supervisor from calling someone on the carpet who is one of 9 their subordinates and saying "Hey, I don't want you acting 10 that way" and this is a typical command function, I assume 11 and this is the way things are normally handled on the job. Is 12 this fair to say? 13
 - A:
- 14 Okay. Now, have you ever known of an 15 investigation in the Pennsylvania State Police where an 16 individual was read rights in the administrative or criminal of 17 any stage and investigated without there being a procedurally 18 proper, in other words, according to regulation; an initiated 19 BPR investigation? Do you understand my question? Let me 20 go back. I'm going to make it clear, because I realize it's 21 rather lengthy. Do you know of any situations in your 22 experience where an individual is investigated, read their 23 rights whether it be for purposes of administrative, union contract or criminal purposes without the investigation being 25

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- Anything having to do with Mr. Ober's case. I'm not going to ask you a substantial question yet we'll see where 2 we go with that?
- During the course of my. In one of those interviews, Captain Ober's name was not mentioned, it was really questions related to process and procedure, how things 6 are done.
- 8 O: Well, that was going to be in my R&D section. There is a major issue in this case in terms of AR, regulation how the regulation was modified and it involves a function of 10 R & D and I am going to ask you questions about that so, I am 11 12 going to assume on that one that there was some questions of a different nature, but I am not talking about that. Um, were 13 14 you, is it, were you interviewed more than once about matters 15 either pertaining to or having to do with Mr. Ober?
- 16 A:

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- O. 17 All right, can you tell me, sir when the first time 18 may have been?
- I honestly don't know. Ah. I can't. I'm trying to 19 put it in context with something else. I really can't. I am 20 going to say it's probably been two years ago some where 21 22 there abouts, but um.
 - When was the last time?

- initiated through regulation by according to regulation through
- 2 BPR?
- 3 A: I have been interviewed in a scenario where I was given my rights. I interviewed...
 - I'm going to question you. Can I interrupt you? 0:
 - A: Sure.
 - Q: Never mind, you finish, sir.

be anything - at that point.

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- I was just going to say and although at that time I inquired when I was, during the course of my interview, the nature of the allegations and who the subject was and those types questions I was told that, I cant' remember exactly what 11 I was told, but it was sort like; well, don't really have a subject right now. We are looking into this so, it sounds although I 13 was given rights and those types of things, signed forms and so forth that would be my experience in a situation where it 15 sounded like, it felt like an IA investigation, although in terms of allegations and subjects and things like that didn't appear to 17
- This is one of those very scary moments for a 19 lawyer when you ask a question and your not sure of the 20 21 answer, but I am going to take the risk. Were you questioned about anything having to with Mr. Ober's case? 22
 - Ah with his lawsuit or I mean?

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- The last time I would say was probably within the last, again, its very difficult. I'm going to say probably within the last six or eight months.
- Okay, just a moment. I'm going to gather my thoughts. Would the last six to eight months have to do with in any connection with the R & D functions? 6
 - A:

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- 8 0 I'm going to go to the earlier. Okay, you say a couple years? 9
 - I'm really speculating. I don't know for sure. A:
- 11 Q: Did that interview take place before you became 12 the R & D Director?
 - A: No. I was not in R & D at the time.
- So, it was after the fall of was it 99? 98. When 14 you left. In the fall of 98 you were... 15
- Counsel: Before we get into the line of questioning 16 17 because I think there's an attorney work product issue here. I would like a chance to confer with the Chief Counsel about 18 19 this issue. I was not aware you were going to get into some of these issues today, so I want a chance to talk with her about 20
- 21 this because there's a legal issue involved here so whether or
- 22 not you can get into these areas.
- 23 Bailey: Okay, just one thing when you two go and 24 talk, I understand and we can certainly take a break. I'm obviously, I found something here I want to pursue. I can

- barely contain myself, but here's the thing I just want to say to
- 2 you. Normally, in the procedure, and in this case because of
- the nature of this case; I would like to follow this. Naturally,
- you can confer with the client. I want to state for the record,
- that if I am going to make if need be, a constitutional issue of
- the interpretation of professional rules where corporate
- managers in affect are shut up or are prevented from
- answering questions based upon some phony and purported
- concept in our court rules which were written obviously, in
- corporate boardrooms whereby there is an attempt to use 10
- privilege as a way to prevent an individual from disclosing 11
- information where that individual has no individual right at 12
- stake, i.e., where the attorney/client privilege is between the 13
- organization and the attorney and not the individual and the 14
- attorney. I think it is a public interest farce, these rules. I am 15
- just doing this for the record, by the way, folks. Just so you 16
- understanding I am preserving objections and preserving 17
- issues for appeal, if need be. Because I'm going, damn it, I'm 18
- going everywhere with this thing, I am getting tired of this 19
- stuff. I don't believe that an individual in the public sector 20
- addressing an issue of public concern should be prevented 21
- 22 from speaking out, unless that individual, this man's character
- by reputation is impeccable and he obviously has not interest 23
- at stake other than telling the truth and my client does have an 24
- 25 interest in the truth coming out, so I want to very strongly

- Before we put anything on the record, I
- would like to incorporate in this area of the Brief, page 4 of
- the Court's Opinion of August 13, 2001, um Plaintiff filed his
- Complaint on January 16, 2001 on March 16, 2001, the
- Defendant's filed a Motion to Dismiss in which they cited to
- State Police Regulation AR1.102 subsection C to argue the
- Plaintiff had not properly followed his chain of command in
- reporting the F.B.I. investigation. This could justifiably,
- arguably, correction, this could arguably justify the PSP
- investigation of Ober. That police regulation, as noted by 10
- Plaintiff in his opposing Brief, was not in effect at the time of
- the events about which he complained. I don't think there's 12
- any need to go on further. The judge has since ruled that the 13
- attorneys, at least for the time being are out of the case 14
- because there's no abuse of process being the necessary injury 15
- or actions being taken. There was no abuse of process issue. 16
- 17 We maintain, of course, that these are evidentiary matters

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- relevant to the First Amendment claims and that a frivolous 19 Rule 11 Motion is still in the case by choice of the Defendants
- 20 and as noted in the Case Management Conference that we
- 21 have the right to explore those issues as we have pointed out
- there. That being said, I want to make sure that the ground are
- stated on the record that we feel these issues are certainly 23
- relevant and that they are discoverable and they do not relate 24
- to the issue of privilege. If there is any privilege, it would be

- object to any effort made to delimit his testimony. I would
- also object on the basis that in the case management
- scheduling conference with Judge Caldwell, the issue was
- discussed over representations to the Court and about
- modifications to the regulation which as Judge Caldwell, I
- don't want you think I didn't figure this would come up today.
- Made specific reference to Plaintiff's Complaint that the
- matters in the Motion to Dismiss the Brief in Support of the
- Motion to Dismiss were case dispositive. Making them
- crucial and material to my client's complaint that efforts were 10
- made to subvert the legal process and I realize there are 11
- differences of opinion respectfully we have with the Court or
- the applicability of abuse of process, concepts and law. Now, 13
- that being said. I would like to thank opposing counsel for
- your patience. Let's suspend. You can confer with counsel. I
- do want you to know that I am going to ask the questions and
- you can, you know, if you make a decision at some point that 17
- you are going interpose privilege, you may do so, but I am
- going to ask the questions to get them down. I know of no 19
- other way to do this? I can't leave that realm unvisited, as you 20
- probably know. With that being said. Crystal, would you 21
- please for the record.
- 23 Lyde: It's 9:39 a m. We will take a short break
- Lyde: It's 10:07 a.m. we're back on record. 24

- waived and secondly, that those rules, more specifically, I
- believe its Rule 4.2 of the Rules of Professional Conduct
- should not prevent my being allowed to question Major
- Merryman on matters of public concern. Privileges not apply.
- Thank you very much. Joanne.
 - Counsel: Major Merryman has been advised of his
- attorney/client privilege with regard to some of the areas that
- you might be questioning about. Moreover, if you get into
- areas of the attorney work product investigation, we will be
- reserving the right to object any documents you might be 10
- requesting that relate to areas that Major Merryman may
- testify to, but we are not going object on the basis of attorney 12
- work product with regard to him answering questions 13
- 14 regarding any investigation that we did that are within his
- knowledge. That does not mean that we waive the objection
- with regard to the documents you may request or with regard 16
- to that argument being made with regard to future witnesses. 17
- Bailey: Okay, let me just say that the idea of 18 attorney investigation is something which not only is a 19
- morphus and not clearly defined, but I don't think its protected 20
- 21 in any way whatsoever. Secondly, your privilege is not the
- 22 attorneys; the privileges belong to the individual. They are
- 23 waivable in any event. The issue here implicated of course
- would be the Pennsylvania State Police Organization, who I want everyone to note, is not a Defendant in this action. They

- are not a Defendant in this action. Were the Pennsylvania
- State Police a Defendant in this action, I could understand
- some objections. They are not. The Defendants in this case
- are all individuals; the issues involved in this case are all 4
- 5 violations of federally guaranteed rights by virtues of
- individuals acting under color of state law unlawfully. There
- can by definition be no privilege which would prevent me
- from questioning this witness, I don't believe that attorneys
- can pick their witnesses anywhere and use rules that don't apply to cut off the witnesses' testimony. Again, pointing out 10
- 11
- Pennsylvania State Police are not a Defendant in this case. 12
- All right counsel. Wait a minute. Since 13 your making statements to me, the presence of an attorney
- work product investigation does not depend upon whether the 14
- 15
- Pennsylvania State Police is a Defendant in this litigation. An 16 attorney work product investigation can and does occur with
- 17 individual defendants as well as with the Pennsylvania State
- 18 Police as an organizational defendant in a case. So, with
- regard to that point, which I understand you are making for the 19
- record, we would just respond to that point also for the record. 20
- Although, it was indicated Ms. Reynolds, Major Merryman 21
- has been advised as to the attorney/client privilege and the 22
- 23 decision is to waive ability of said.
- 24 Bailey: Our opinion and the bottom line very simply, Barbara, is there is no attorney/client privilege here. It

- Well, yeah counsel, not to belabor the
- 2 point, but representing the organization, the organization being
- a creature of accomplishment obviously encompasses 3
- management individuals in that organization. But, in any
- event, I believe Major Merryman has been appropriately
- advised and I would certainly leave it to... as appropriate. 6
- We don't have any desire to sue the
- 8 Pennsylvania State Police because under current law in the
- eleventh amendment, they're not defendants here. Who
- knows what changes may occur out there someday? May the 10
- present Supreme Court right move on, but that's the way it is
- now and we play by those rules. 12
 - Okay, Major let me get back to where we were quite some time ago. My understanding is that you were
- interviewed about matters pertaining to Mr. Ober on at least
- two different occasions? 16
 - A: Yes.
- 18 On one of those occasions you were read your rights, you had indicated. I thought. Is that correct? 10
- 20 A: Yes

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- 21 Q: Can you tell which occasion that was the first or the second? I understand the first to be something that
- 23 occurred sometime on or about the fall of 98 or strike that.
- Did the first investigation come after June of 1999?

- is a construct being used to prevent us, I'm not saying you are
- using it, but I mean potentially being raised as a way to
- prevent us from talking to this individual. You're not
- representing him or never represented him in this capacity as a
- Defendant. The organization is not a Defendant here. That's
- the basis what I was saving.
- Counsel: Well, I don't - defendant or that the
- organization need be made a defendant. Major Merryman
- certainly can be represented as a witness.
 - It's probably not his choice. I mean I think
- he's here by virtue of the actions of the employer. He's not 11
- 12 here by virtue of - .

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- 13 Counsel: Actually, counsel, he's here by virtue of
- 14 your Notice to depose
- 15 Bailey: Yeah, but he's not having a choice of. I
- mean, I don't know if you wanted to comment on this, but I 16
- doubt very much that he doesn't have a private attorney and 17
- 18 hasn't by choice. I'm willing to bet that he's been told that
- 19 you're representing him because you made a decision to
- 20 represent him, not because he made a request. And if it's
- otherwise, that's fine. But, the capacity is the issue. And the 21
- capacity is that you are Pennsylvania State Police attorneys 22
- and you represent the organization. He is an individual who is
- a material witness pertaining the defendants in this case.

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- A: I can't say with any degree of certainty when that
- 2 did occur. I'm sorry.
- Bailey: One of the things that we have to go over
- by the way is some of the document requests. Some stuff we
- requested ought to be provided. We'll go over that later. It's 5
- been out there since October you know.
 - Counsel: I didn't think you had yet elected by what
- 8 means wish the information provided.
- Bailey: That was only appertaining to certain
- documents, as I understood. There's a lot of stuff there that 10
- 11 obviously you have a duty to provide of you know of a
- personnel nature that we would like to get, but we'll go over 12
- 13 that after

- Counsel: I believe the question is by what method 14
- 15 you wish to inspect. You wish copies, copy costs and so forth.
- That's my understanding. Again, if things have progressed
- beyond that stage, perhaps we can discuss those after depos. 17 18
- I think your response on the documents is
- meant to . I respectfully disagree with what you have done. 19
- We'll talk about that later. I realize that. But, we need to get
- that resolved now because we are getting near the end. 21
- 22 Q: Sir, Major Merryman, lets go back to the first
- interview that was done. Was this done, if you know during
- the period of time that Mr. Ober was being investigated, but prior to when he had filed his complaint in this matter?



- A: Sequentially, I can't really tell you where that
- 2 fell. When I was interviewed, I was told not to discuss this
- 3 and I respected that directive. So, in terms of what else was
- 4 happening around and as I mentioned earlier in that first
- 5 interview, Captain Ober's name was not specifically
- 6 mentioned.
 - Q: Who interviewed you?
- 8 A: I was interviewed by Majors Tom Williams and
- 9 Robert Werts.
- 10 Q: Was anyone else present?
- 11 A: I don't believe so.
- 12 Q: Where did that interview take place?
- 13 A: In the offices of the Bureau of Professional
- 14 Responsibility.
- Q: Were there any recordings made? You know,tape recorder, electronic recording?
- 17 A: I don't recall whether it was recorded or not?
- 18 Q: Were notes taken by Mr. Werts and/or Mr.
- 19 Williams?
- 20 A: I'm reasonably sure they were taking notes as we
- 21 talked.
- 22 Q: Do you recollect how long the interview lasted?
- 23 A: I would say probably about an hour.
- Q: Now, where you read your rights during that
- 25 interview?

- 1 A: The. I can describe the nature of the questions.
- 2 They dealt with procedural questions. Um, in other words, it
- 3 was presented to me in theoretical scenario to say for example,
- 4 if certain things occurred, what would be the right way to
- 5 follow up with that. What do regulations require of someone
- 6 when they come to possess certain types of knowledge. Those
- 7 types of questions.
- Q: Lets explore that for a moment, if I may, sir. I
- 9 think you had indicated in response to an earlier question that
- 10 Mr. Ober's name was not mentioned during that interview.
- 11 What facts known to you caused you to offer the opinion, if
- 12 you will, that it had to do with Mr. Ober.
- 13 A: The scenarios that were described in terms of
- 14 who would have had information and what could or should be
- 15 done with that information really implied that the individual at
- 16 the center of the scenario would have been in; I inferred it to
- 17 mean in the Director of IAD position.
- 18 Q: Now, for the record. This might be a good point
- 19 to do this. Do you know whether Captain Daryl Ober ever
- 20 served as the head of IAD? The Division of IAD within BPR?
- 21 A: Yes he did.
- 22 Q: Do you have a recollection of when? Can you
- 23 give us a rough idea as to when?



- A: It's been some time. I can't say for certain. So,
- 2 it's somewhat speculative.
- 3 Q: Is it fair to say that you were read your rights
- 4 during the second interview?
 - A: Yes, for certain.
- 6 Q: Can you tell me what explanation was given to
- 7 you for reading you your rights during the second interview?
 - A: No, sir. I can't.
- Q: Who conducted the second interview?
- A: Captain Brown. John R. Brown.
- 11 Q: Any lawyer present?
- 12 A: No sir,
- 3 Bailey: Okay, I'm going to revisit the second
- 14 interview in just a minute. I want to go back to the first
- 15 interview.

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- 16 Q: Do you have a recollection of the questions that
- 17 you were asked during the first interview? Let me strike the
- 18 previous question. Let me go back and restate it. It is my
- 19 understanding that you had an interview with Mr. Williams
- 20 and Mr. Werts that it was the first interview sequentially and
- 21 your not sure if it was prior to when Mr. Ober filed his
- 22 complaint, but and your not certain whether your rights were
- 23 read to you during that interview. The question is can you just
- 24 tell you in simple words what questions you were asked that
- you can remember as you sit here today?
 - 30
 - A: If I left BPR in the fall of 98, I'm without saying
- 2 with great deal of certainty; I believe it was in the spring of 98
- 3 when he was put in that position.
 - Q: Okay, so when you.
- 5 A: Earlier that year.
 - Q: Earlier that year. So, to the best of your
- 7 knowledge and recollection, Mr. Ober had somewhere on or
- 8 about the spring of 98 come into the position of the head of
- 9 IAD?

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- A: Yes
- 11 Q: And when you left BPR, Mr. Ober was still the
- 12 head of the Division IAD?
 - A: Yes.
- 14 Q: And who succeeded you?
- 15 A: Hawthorne Conley.
- 16 Q: And do you understand that Mr. Conley is also a
- 17 defendant in this lawsuit? You may not have know that?
 - A: You had mentioned it earlier today, I believe.
- 19 Q: I just want to make you aware of that fact. When
- 20 Mr. Williams, lets get back to the interview now. Do you
- 21 have a recollection of whether Mr. Williams or Mr. Werts
- 22 were asking you um, opinions based on your expertise or was
- 23 the focus on the gathering of facts. I'm looking for the
- 24 purpose of this interview. It's hard for me to understand what
- 25 the purpose of it is? I realize you can't speculate, but you



were there. You remember the tones, you remember the 2 voices, you remember the words, the way it came through. I mean what was the purpose of this interview?

The nature of the questions suggested to me that they were looking for process clarification to use your term to ask me questions based on my knowledge of BPR and Internal Affairs procedures.

Q: Well, weren't they the assigned investigators to this investigation. I mean, sir, was it billed as an investigation to you? Was it represented to you as an investigation?

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A:

10 11 It was um. I asked a few questions about what 12 were allegations, who was the subject, was there a subject? 13 And it was really treated very umm. I was not given specific 14 information in response to those types of questions. Umm, I was told that they were just you know, looking for some 15 16 clarification on issues or trying to make some determinations. 17 Develop some information, but it wasn't characterized to me. 18 I mean when I asked for specific allegations and who was the subject, if there was a subject and there were none provided to 19 me, I guess I would say that it was characterized in very 20 general terms. Just an information gathering process? I 21 guess? That was my understanding of the way it was 22 presented. 23

He was a Major.

What was Mr. Williams' rank at that time?

So, in some cases it would seem like a no brainer that you would take it up the chain of command and certain other circumstances it may require that you don't immediately do that

Q: Did they ask you if there were a bonafide external, external for the Pennsylvania State Police criminal investigation into your superiors if you had a duty to go and tell your superiors that they were being investigated?

Certain parts of this I remember with clarity. 10 They kept asking me in very generic terms, what if, what if and I said look, I don't know what the source of this 11 12 theoretical information is that you keep presenting to me and at that point, Major Werts says the F.B.I. and then the question 13 was if it came from the F.B.I., would you take it up the chain of command and the scenario included allegations of criminal 15 conduct. And my response was it depends on who the subjects of the investigation are. So, um, you know it doesn't 17 really matter necessarily what the source was, it also depends 18 on the circumstances surrounding the type of misconduct and 19 20 the subject of the investigation.

21 So, the point is there is no Pennsylvania State Police regulation that tells you blindly regardless of what 22 23 comes in from the; I can't conceive as such a thing existing 24 anyway, I'm not trying to insult your intelligence. Believe me or your professional integrity, believe me so, please don't read

- So you got a full Major. How about Mr. Werts? 2 What was his rank?
 - A: He was also a Major.
- So, you've got two Majors sitting in front of you asking you questions. Apparently, it was not accusatory; it did not appear to be aimed at you.
 - A: Correct.

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O: And their asking you questions about. Can you remember some of the individual questions? I'm at a loss, but 10 understand

11 None of the questions concerned whether, if I 12 possessed information about allegations of misconduct when or where I would take up the chain of command. The circumstances under which I would take information up the 14 chain of command. That was a very specific area of interest for them. In other words, if you were told this or told that, 16 would you go up the chain of command with this information?

18 Well, does the Pennsylvania State Police regulations make that perfectly and abundantly clear when you're supposed to go up the chain of command with 20 21 something?

Well, I think they make it clear under certain circumstances, but you know my position on this is the same today as it was then. It depends on what types of information comes to you and what the circumstances are surrounding it.

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that into this question. So there is obviously, I would assume, there is no Pennsylvania State regulation and I am going to ask you a question about customer practice in a second. But, there is no Pennsylvania State Police regulation which says that if an outside agency to include the F.B.I., is investigating higher ups then you have a duty to go and report to the higher ups. That they have made an inquiry? 7

Are you referring to the higher ups who may potentially be the subject of the allegations?

Absolutely. Thank you very much. That's 10 11 exactly what I am referring to. If the F.B.I. comes to you and they say we are looking into allegations of some kind of illicit 12 and unlawful activity, which on its face, would include the power and authority of let us say, the commissioner, and they were looking into the possibility of the higher ups, which by definition will include the commissioner in that case into wrong doing. Is there a Pennsylvania State Police regulation which requires you to go and tell the commissioner that the F.B.I. has indicated they might be investigating him or people at a high level?

I know of such regulation.

Now, understandably as you say, decisions that have to do with when or where you go. When or where you go up the chain of command, under the circumstances? Is that

- correct? By definition they have to vary according to circumstance?
- A: Ye

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- Q: Okay. And you know of no regulation, which
 provides specific guidance as to that?
- A: Under the circumstance we have just been discussing, No.
- Q: Now during the period of time that Mr. Ober worked for you in the sense that he was a subordinate of yours. Do you have a recollection of the manner and way in which he performed his duties?
 - A: Yes.
- Q: Could you share them with us please?
- 14 A: I found Captain Ober to be extremely meticulous, 15 driven in his commitment to do the best possible job that he
- 16 could do. Very detail orientated. Very committed to the
- ideals of the department. A man of what I believe in my
 observation, high moral character.
- 19 Q: Have you ever seen Captain Ober act in
 20 disrespectful or disloyal; I mean there is a value to loyalty, of
 21 course, in any organization and for whatever that term would
 22 mean I realize it is highly subjective in a professional sense.
- 23 Do you have any recollection of Captain Ober ever acting in a
- 24 disloyal or disrespectful fashion to the Commissioner, Colonel
- 25 Paul Evanko?

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- A: No, I can't say that I did.
- Q: So, it appeared to you that these were two individuals that were assigned a job to do and were doing the job?
 - A: Yes

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- Q: Now, let me ask you about procedure. I want to go back now, change direction a little bit. I want to go back to the issue of procedures. Did you ever learn or ever become aware that there was a BPR done on Captain Ober about the same inquiry that Major Williams and Major Werts talked to you about. By rumor or otherwise?
- 12 Well, there was a lot of talk around. A lot of 13 speculation and again, you know I was directed that this was not to be a topic of discussion and I didn't seek out people to 14 15 discuss it with for that reason. You hear things. The nature of whatever followed on with Captain Ober. I really can't say 16 17 with any; I really don't know. I know that interviews were conducted, but who all was interviewed and the specific 18 direction of the process. Whether there is a IA number 19 attached to the General Investigative Report; I don't know 20 those things. 21
- Q: How were the numbers assigned? For example, it's the way the Court docketing system works and practically every system I am familiar with. They start with the year and then they sequentially number them as they come in. So, if

- A: No, I have not
- Q: And you know of no such circumstances?
 - A: No, I don't.
- 4 Q: All right now, did you ask Major Werts and
- 5 Major Williams, generically, what's this all about? To me it
- 6 sort of a basic question. We all get curious, of course, being
- 7 questioned by two very, you know a Major is very high,
- 8 powerful position. So, your being questioned by two Majors
- 9 and you have indicated, not in an accusatory way; it doesn't
- 10 appear to be aimed at you, but obviously from what you have
- described, your sitting there trying to figure out what's the
- 12 method or reason for this. And you reach your conclusions
- 13 that you have shared with us; there is no reason to retrace that.
- 14 Did you ever, on the other hand; overtly say to them, what's
- 15 this about? What are you fellows doing, what's occurring
- 16 here?

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- 17 A: I believe at the conclusion of the interview, I said
 18 I really don't what this is about, but I will tell you I don't like
 19 it.
 - Q: And what was their response?
- 21 A: Pretty much noncommittal, well, you know,
- 22 that's just the way it is.
- 23 Q: Did you denote in either Mr. Williams or Mr.
- 24 Werts any personal ominous directed at the subject of their
- 25 questions?

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- you're the first one in the door on January 1st or I guess
- January 2nd of the year 2002, you get the number 1. If you're
- 3 case 2000 of that year its you know, 2002. How are BPR
- 4 numbers assigned?
- A: I would have to say I'm really not sure at this
- 6 point. I know at one time we had a book like where the
- 7 numbers were recorded and the case was listed and I don't
- 8 think that we even started on the new year. I don't know. I
- 9 think it's done by computer now and whether it resets on the
- 10 first of the year, I don't know.
 - Q: But they are done sequentially?
- 12 A: Yes

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- 13 Q: They are numbered as they come in?
- 14 A: Ye
- 15 Q: Okay, so whether it begins on the first of the year
- or not. The point is that as far as the numbers go, its as you
- 17 come through the door and as their assigned an investigation
- 18 or a number?
- 19 A: Yes
- Q: Do you know that if at the time Mr. Williams and
- 21 Mr. Werts were talking to you and interviewing you in your
- 22 office over at BPR. Whether a BPR had begun on Captain
- 23 Ober?

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A: I don't know.

- When you left, the Bureau of Professional O: 2 Responsibility on or about the fall of 1998, were there any open BPR on Captain Ober?
- A: No.

- Do you know? How is a BPR processed once a Q: 6 decision is reached?
 - Once a decision to conduct an investigation is A: made?
- No, once the investigation is done. Once it has been adjudicated; the decision is made. What happens? 10
- Well, I want to be sure that I understand your 11 12 question
- Okay, I can make it a lot simpler. When an 13 14 investigation is done. When a BPR investigation is 15 begun. It is assigned a number and the investigation
- has then begun. Is that correct? 16
- 17 A: Yes.
- When a decision is made as to a recommendation. 18
- 19 I understand what BPR does is eventually at some point
- 20 through the end of the process, there is a some kind of a
- 21 recommendation made whether its unfounded whether its
- 22 some sort of disciplinary recommendation or whatever, that
- 23 sort of thing. That's eventually the end of the process. Is that
- correct? 24
- 25 That's not quite accurate.

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- Let me ask you. There were no investigations pending on Captain Ober when you left BPR. Is that correct? 2
 - A: Yes

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- As you sit here today, do you know of any open
- BPRs or, investigations on Captain Ober? Is that fair? I 5
- 6 should stop using BPRs, I guess maybe and just say
- investigations? So you know of no investigations on Captain
- Ober as we sit here today?
- 9 A: No. I don't know.
- 10 Do you know if there was any investigation done on Captain Ober concerning a museum or Penn State historic 11
- 12 items and that sort of thing? If there was ever an investigation
- 13 done him over that?
- 14 A: I recall. I don't know if it was rumor, but I do 15 remember that.
- 16 Can you share with me what you recollect about that? That you might know? By rumor or otherwise; rumors 17
- 18 can be very valuable things in collecting information in
- 19 lawsuits, so if you have any information all rumor or
- 20 otherwise, would you share it with us, please?
- 21 Well, with the understanding that it may be based A: 22 on rumor.
- 23 O: Yes sir, that's fine.
- 24 A: My recollection is that he had been accused of
 - using his position to acquire State Police memorabilia from a

- Okay, tell me how it works?
- I view the internal affairs process as one where 2
- 3 facts are collected and presented in the investigative report. It
- is up to the adjudicator to read it. There is no recommendation
- for any action made in the IA case.
- Bailey: 6 I'm sorry. Your right. I stand corrected.
- Sorry.
- So, the adjudicator makes a determination on
- whether or not its sustained or unfounded or not sustained.
- 10 Q: Okay. Now, can you do a. I'm in the
- 11 Pennsylvania State Police. Can you do a BPR on me;
- 12 investigate me, close it out and I'm never told anything?
- 13 A: I don't believe that would be consistent with the 14 regulations and practice.
- So, if you want to investigate me, you got a duty 15 O: to tell me? 16
- 17 A:
- 18 O: Okay, now if the investigation comes to a
- conclusion of some type, any type, a report or whatever is 19 20
- done. Do you have a duty to tell me? 21 A: Yes.
- 22 And do you know of any open investigations on
- 23 Captain Ober as we sit here today?
- No sir, I don't. 24

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- citizen or citizens that possessed them and um, the out come
- of which was the determination that he had not used his
- position inappropriately. 3
- Okay and is it your; again, I understand that its by
- rumor. But, is your understanding that? Do you have any? 5
- Are there any facts known to you that would indicate that he
- 7 was advised of that BPR?
 - A: I don't have any knowledge.
- 9 Q: Investigation, I'm sorry.
 - A:

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- 11 0: Do you know whether he was ever advised that it
- 12 had come to an end?
 - A: I have no knowledge.
- O: You just don't know?
- Right. 15 A:
- 16 O: Were you ever questioned about that one?
 - No, I was not. A:
- 18 Captain John Brown, at some point you had
- indicated you were read your rights and that Mr. Brown was 19
- 20 the individual who read you your rights?
 - A: Um huh.
 - Q: Did Mr. Brown tell you why he was doing that?
- 23 A: Why he read me my rights?
- Yeah? 24 0:
- 25 Not at the time

- O: I think you had indicated that during that
- interview Mr. Ober was mentioned. Is that correct? 2
 - A: Yes
- O: How in that manner, substantively, how and what
- 5 was said about him if you remember?
- A: There was a question about how Captain Ober
- had obtained information regarding administrative regulation
- 11 and its revision and Captain Brown indicated that his
- investigation was to determine how Captain Ober may have 9 come to possess that information. 10
- 11
 - You have to forgive me. I would assume
- 12 information having to do with R & B issues is available to
- 13 every Pennsylvania State Police member. I would assume
- 14

- 15 Our historical files in the Bureau of R & D have
- been open access for anyone who ever wanted to look at them, 16
- historically. 17
- 18 And I may be mistaken, but based upon a proper 19 request and scheduling to the convenience of the Pennsylvania
- 20 State Police that they are even open to the public to reporters,
- legislatures, etc.? 21
- 22 I don't know if that has ever been broached? I'm
- not aware of any of those. 23
- 24 Well, I did do some checking and for example,
- 25 there is a Pennsylvania State Troopers, an association that
 - 45
- I don't know. A:
- 2 O: You mean you don't know that off the top of your
- 3 head?
- 4 A: I'm afraid not, Mr. Bailey.
- 5 0: You just remember it was AR1-1?
- Um huh. Just organization and structure. A:
- Did it have to do with the issue of chain of O:
- command? 8

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- 9 A:
- Q: As you sit here today, do you remember the last 10
- time AR1.1 was modified as to any provisions, which may 11
- deal with. I realize it's a rather large regulation. 12
- 13 Yes, it's a large regulation. A:
- 0: As you sit here today, do you have a recollection 14
- 15 of when AR-1.1 was last modified on matters pertaining to
- chain of command? If you know? 16
 - I don't know.
- Okay, that's fair enough. A lot of times questions 18
- like this, you simply don't guess wildly. You can qualify 19
- answer to your degree of certainty, but. 20
- We change regulations all the time. It's one of 21
- 22 the things we do in the Bureau.
- 23 O: Now when you have a regulation. The effective
- date of the regulation, I thought, was printed in the upper right
- 25 hand corner of the front of the regulation. Am I correct?



- represents the troopers. It is my understanding that they have
- 2 access to those files on request or am I mistaken? If you
- know? 3
- I don't know with certainty, but as I said here, if
- 5 there was a legitimate need or a desire or interest. I mean
- those historical files basically show the origins and
- development of documents and regulations and we routinely
- share information regarding the development; in fact we
- jointly develop regulations some times or least work on
- developing regulations jointly with the PSTA. So, from a 10
- 11 prospective of possibilities, I would not see a problem with
- working with PSTA on that type of scenario. 12
- 13 Q: I was just told by an attorney over there for what 14
- its worth; go out and make a request and they couldn't think of 15
- any reason why they would not be honored, but I don't know?
- I guess I didn't ask them the last time they did one, or did 16
- 17 request an access. Mr. Brown, I understand questioned you
- about how Captain Ober had come to have knowledge about a 18
- historic file?
- À٠ 20 Yes sir
- Q: Which file? 21
- 22 A: Administrative regulation.
- 23 Do you remember which one?
- 11. 24 A:
- Was it 1.102 subsection C in particular?

- That's correct A:
- Why would you do that? Why would want to
- 3 make sure that whoever saw a regulation would see Bingo
- right on the front, the effective day of the regulation.
- 5 A: It's not only on the front, its on each page of the
- regulation and um.

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- O: So why is that done?
- I would say that it's to ensure clarity and
- accuracy in dealing with regulations. When you process as
- many directives as we do and we have as many changes as we
- do, it's not inconceivable to think that certain manuals; and we 11
- have many sets of regulations throughout the department. It
- could be that a manual did not get updated as it should have 13
- and so, if your looking at regulation and your looking at yours
- and your looking at mine, we want to be sure were looking at 15
- the same document without reading every word by knowing
- the last revision date, you know exactly what your looking at. 17
- 18 The term expo facto? Do you know what that 19 means?
- 20 Well, I have heard of the term, but I wouldn't 21
- want to define it for you. 22 I wouldn't either, to be honest with you. But, if I
- pass a law today, do you know whether I can pass a law or 23
- 24 regulation making something you did yesterday illegal?
 - I believe that 's possible.

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!	Q:	I mean it doesn't even	fit	in	too	well	with
1	common ser	se too well does it?					

No in my view.

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- And there have been a few political systems on 5 earth were they do that, but we don't do that in America. I don't believe. The Constitution said we can't do it. So, if you have a regulation which prohibits, which defines and prohibits certain conduct, it has an effective date, you can't reach into 8 the past and say what you did back then is unlawful by virtue of this regulation we passed today and we are going to punish 10 11 you for that, right?
 - A: I don't believe they would do that.
- 13 Okay, now in modifying a regulation, its Q: modified. How is that communicated to the people it is 14 15 supposed to reach?
- When we modify a regulation, the top page on the 16 17 revision is page that we call a chain sheet. It has a number on 18 it so that they can be tracked. Of course, it's dated. It is signed by appropriate authority and the package was the chain 19 sheet and the revised regulation are distributed through; we 20 have a structured distribution of all regulations at the Bureau. 21 We can show you who gets copies of every document that we 22 23 produce. Every regulation that we produce and so that change is distributed based on the distribution table.

49

command or a new organizational segment is developed and established and those type of things and all that information exists within AR1.1. So we had actually had a hard time catching up to where we were functionally with that regulation. The regulation was not current and were having a hard time getting there because of the reoccurring or routinely occurring changes that affected it. So, in the case of AR1.1, there were multiple changes that occurred in that regulation and that would impact on how we would distribute, what we reproduce and what we would distribute.

Bottom line as you sit here today, your not sure whether an entire reprint was necessary or needed to be done, but it depends on each situation and it varies whether you would reprint the old regulation or just post a change or whatever? Is that right?

A: I can say certainly that it was more than a one page change. There were multiple revisions and there were multiple pages involved in the revision.

When Mr. Brown came to talk to you, do you remember; what was he getting at with how Mr. Ober found out about a change in a regulation? Strike that because I'm not sure Mr. Ober did find out. I'm not so sure his lawyer didn't see this problem, but I want to ask you do you know if I come down to R & D and I'm a Pennsylvania State Trooper or I am Officer, you know a higher ranking Officer. Is there any

Okay. I'm going change direction a little bit. I 2 want to ask you some questions about distribution. I purchase a number of civil rights books, those big red books up their and every year I pay for changes. They come through. It's loose leaf and certain pages are changed in there and then their dated as to when the day of that change. Now lets say you change Section 1.102 subsection C of AR1.1. Lets say you change that. Now when I distribute the change, do I reprint 9 the entire regulation or do I just send out the change with that cover sheet and say this is to be substituted? Is that what I do? 10 11 Or do I print the entire regulation over every change? 12

It depends. There is not a quick and easy answer. It's not the same in every case.

In the case of, if you know. In the case of 1.102 subsection C, which I believe was changed some time on or 15 about February of the year 2001. Okay and I may be wrong 16 about that, that's just what I suspect. Do you know whether 17 the entire regulation was changed or do you know whether there was just a. And then I'm going to ask you about 19 20 distribution whether there was just like one page or?

We, in our Bureau had been working on changes 22 to AR1.1 for quite some time. There had been numerous organizational changes within the department over a period of time and I am referring to things like where one organizational segment is moved from chain of command to another chain of

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prohibition on my inquiring about what is happening with changes in a regulation or what its status may be?

There is no prohibition.

So, if Colonel Evanko went down and he wanted to ask about what's happening with a change in a regulation, the staff there would answer his questions of course, naturally he's commissioner and everything, but they would answer his questions, right? 8

A:

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Q: And if a Pennsylvania State Trooper came in, and just inquired, provided I'm assuming it's convenient to the staff and the work they're doing, they would answer the questions, right? It's not a big secret? Is that right?

> A: Correct

Now what stage in distribution. Strike that. In cases of a changed ARI.1, what would the distribution be? In other words, would it be to the trooper level, region area, front officer, whatever, front office meaning the commissioner's office, the top area there. What would the distribution be?

We have distribution codes for everything and this was a change to the administrative regulations, so it would be distribution AR and we have ARs in all the libraries and all the department facilities and command level people have their own personal sets of ARs. So, on a given installation, there might be multiple sets of Ares and we would distribute copies



of the change to everywhere where we knew there was a copy 2 of the AR s.

3 Q: Does the counsel's office get notified of the change? 4 Are they on the distribution?

I'm sure they must be. I'm sure they have copies. I don't personally know, but I can't imagine that there would not be administrative regulations on the distribution for chief counsel

O: Now when that distribution goes out, that change sheet goes with it, right?

A: Correct.

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12 Does that change sheet say among other things. does it indicate when the affective date of the change is? The 13 14 revision is? Let me tell you why I asked that. Let me tell you 15 where I am coming from. If you're going to change a regulation and it going to affect people perhaps in a 16 disciplinary way. Hey, from this point on you must do X, Y 17 18 or Z. There has to be an effective date so they know when the

A: Yes.

21 Q: And that's on that change sheet. Right?

22 Upper right hand corner. A:

rule applies. Am I correct?

23 Q: Now the change sheet, does it mention what the 24 regulation was before? I mean these are sort of mundane simple questions. I assume a change sheet says what the 25

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distributed through office services types of operation so, in terms of what we would anticipate for who would receive copies we base that on what the distribution list says. Whether 3 or not they receive it, I don't know. 5 Q: How long does it take to distribute? Do you

know? In other words if you get a change this week, how long 7 does it take to get them out? Do they have to be printed? Strike that. Let me lay foundation. I assume at some point you get authority to change a regulation from the front office? 9

That's correct.

11 And in the case of AR1.1, do you remember when the authority to change AR1.1 came through from the 12 13 front office?

> A: I don't recall

15 O: Do they have any kind of a paper or form that tells you that the commissioner's authority is behind the 16 change? 17

18 First of all, the commissioner would sign the 19 change sheet,

20 He would sign the change sheet? Okay. Well, I'm going to ask you some questions about that in a minute 21 too. All right, now that means that you can't go; I mean I 22 23 hope you can't through the Pennsylvania State Police changing regulations without the commissioner's authority. If 24 the top guy doesn't change the authorities or the top lady

regulation is. Does it indicate when the regulation was last for example, June of 97 or July of 97 when it was last changed or 2 anything like that?

A: No. The change sheet might have some general language that would say this regulation has been revised or entirety or extensively, things like that and personnel are directed to review the new document in its entirety. That is on example. Another example may be where it lists specific pages that are revised and it tells you to take out this page and replace it with the new page. That would be the two different ways that we generally put those out.

12 Now lets go back to the historic file. The historic 13 file means what the historic file means. It shows that regulation as it has moved through time with the changes posted to it. Am I correct? 15

A:

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16 17 <u>0</u>٠ Do you know if the counsel's office and the front office are always given changes? I can't conceive of a change 18 to a regulation without the front office and probably the 19 counsel's office being copied on that or distributed on that. 21 Do you know of any situations where a regulation has changed 22 and the front office is not notified? 23

Whether or not they receive these changes, I can't say, but I can tell you that our distribution is what it is, so we don't personally distribute these from our Bureau. They are

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doesn't change the authorities nothing going to get changed, 2 right?

Unless he had delegated authority to one of the 3 A: deputies for example.

Okay, lets talk about that. Do you know whether he delegated authority? AR1.1 to me is like your fundamental 6 organization; it's like the basic structure from my reading. Do you know whether Commissioner Evanko has delegated the

authority to make changes in AR1.1 to anyone else? 9

> Α٠ I don't know.

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11 Q: Do you know whether he delegated it to his 12 secretary?

> A: I don't know.

14 Do you know of any circumstances where he 0: delegated it to Mr. Coury or Mr. Wescott or his secretary? 15 16

A: As a regard to this specific regulation, I don't 17 know.

18 You had indicated that AR1.1 that there had been a multitude of changes. I think you had indicated its always 19 going through changes. Is that correct? 20

I think that is what I said or to that effect.

22 Do you have a recollection of changes about the 23 or debates about the issue of chain of command?



- 0: Who's in your office? You're the head, you're 2 the Director?
 - Á٠ Um hub

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- Who's your immediate subordinate?
- A: I have three direct reports. One is an
- Administrative Assistant, her name is Sharon Ottstott, I have 6 7 two Division Directors, one is Lieutenant Wesley Thurston
- and one is Lieutenant Gary Benedict.
 - Do you know who worked on the changes to subsection? Do you know who worked on the changes on AR1.102 subsection C the provisions having to do with, we had one gentlemen in here as a witness earlier on this issue the issue dealing with the chain of command. Do you know who worked in your shop on that?
- 15 A: I don't know of specific. Let me clarify work is 16 assigned to project people.
 - 0: Right.
- And this particular regulation my understanding 18 19 as I said was in process for quite a while, I'd say a couple of 20 years at least and their were multiple project people who had their hands on that project over time, but my understanding is 21 22 the last project person that worked on it was Corporal McAlreavy, William McAlreavy specifically what language 23 he worked on in that documentation I can't say with certainty. 24
 - Have you read 1.102 subsection C?

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2 and we will get an opportunity to talk to those gentlemen from our federal government. Lets say that they come to you and where investigating higher ups the front office lets say, or the governs office is there anything in 1.102 subsection C as you sit here today which would require you to take that information to a potential target of an FBI investigation and inform them because they were in your chain of command? I mean I read it and I don't see it that way. But how you see it your ahead of RD how do you see that?

can trust him we have some procedural questions whatever

- A: I'd have to re-read it very carefully Mr. Bailey 11 before I could answer that question. 12
- 13 Well lets say it says that lets say it's determined by the PSP that regulation requires you if you were contacted 14 15 by the FBI they come to you their doing an investigation and it required you to report that to the targets lets say the PSP say 16 17 that that's what requires you to report that to the targets lets say the PSP say that's what is required or they interpret it that 19 way. Based on your knowledge as a law enforcement official is that lawful? And if you want me to re-structure that let me 20 strike that and ask this question here. What do you understand 21 22 obstruction of an investigation to be?
- 23 Well if I were to talk about an obstruction of an 24 investigation it would be taking action, which would confound or defeat the purpose of the investigation.

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- A: I have read it
- 2 Do you have an opinion on it I'm just curious as a Major in the Pennsylvania State Police if you ever thought about it enough to have an opinion about it?
- Well it's pretty much, its boiler plate language it's formally documents the organizational structure and the administrative higher Hierarchy of the organization. It's a
- document that we that you would want to have for a large complex agency its' a document that where required to have in
- terms of the accreditation of law enforcement agency. 10 I want to ask you some questions of 11
- 12 Accreditation. Now specifically as to Subsection C of section 102 of AR1 do you have an opinion on that? Are you familiar 13 with that the chain of command language? 14
- 15 I'm familiar with that but I couldn't quote it for 16 you.
- 17 Do you have any opinions have you given it any thought to it? 18
- 19 I think its language is essentially formalized what we all understand to believe is the way we operate in a 20 somewhat military environment in terms of keeping your 21 chain of command informed and advised that kind of thing. 22
- 23 Is there anything in 1.102 Subsection C that 24 indicates to you that if the FBI comes and lets say by virtue of their research says Merryman's an honest man we believe we

- O: Or impede the investigation?
- A:

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- O: So if an FBI investigator comes to you rightfully or wrongfully comes to you and says were investigating a
- public corruption case and rightfully or wrongfully we believe
- the front office might be involved higher ups I'm sorry.
- Higher ups in the PSP might be involved. And if you
- understood that to me, not that you would want to believe, not 8
- that it wouldn't even offend you viscerally because you knew
- 10 in your very heart that it wouldn't be true . The point is in
- 11 doing your duties as a law enforcement official would that be
- obstruction to go to a potential target and tell them the FBI is 12
- investigating public corruption that they might be target of? 13
- 14 I think that's a matter of common sense.
- 15 It is to me. Now if you were the target you have 16 been a commander for many years is that correct?
- 17 I guess it depends on what many years is. A A: 18 while
- 19 Well more years than I was. The point is you have a lot of experience in handling people and making 20 decision whether it" administering discipline or counseling or 21 22 advising you had people that you had a responsibility to them
- 23 as a leader institutionally it's that correct?

24 A: Yes sir.



- Alright is one of your people came to you after the fact and said sir a number of months ago I was contacted by the FBI and they thought it was possible that you had done something wrong and I felt I couldn't share that with you. I can understand how it might hurt. I guess would you discipline that person or would you mistreat them over it?
- For what reason are you suggesting that I might A: do that?
- 9 O: You answered the question. You answered the question very well. Thank you. I can't think of any reason 10 would you say to the person you did the right thing perhaps 11 would you consider saying that to them?
 - A: Well where really talking theoretical here?
 - 0:
- Well I'd probably say you did what you had to 15 A:
- do 16

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- 17 Okay and I would assume you wouldn't take 18 action to harm that person?
- 19 A: In the scenario you described I don't believe there would 20 be a reason to.
- 21 O: Okay. Do you know whether Darrell Ober had ever served in any kind of RD Capacity? 22
- 23 A: Yes he did
- 24 And can you tell us in what way?

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- he would have monitor the progress he would have done
- person, and the originating organization segments. He would
- have signed off on the document as it started up the chain of
- 6

- 10 for potential embarrassment?
- 11 12
- 13 Q: Do you know whether he ever did in anything 14
- 15 A: I don't know if he ever did or not.
- Well a short question is do you recollect any 16
- 17 instances when Ober recommended any department short
- attention?
- 20
- 21 O: Do you know why you were moved out of BPR?
- 22 I was told that there was an opening for a
- Director in RD and felt that I was the guy to go over there. 23
- 24 office on how to do things?



- He was a section supervisor in the programming division his primary responsibilities would included managing the directive system changes to the directives special orders regulations those things?
- Can you tell us alittle more about what that means, what that entails?
- Well revisions come in some background on the
- function are role is to facilitate the process in providing
- direction to the department. We function I view it as an
- 10 extension to the front office in that we by managing directives
- we are the vehicle by which the Executive office tell are 11
- people what to do and what not to do. And having said that
- you have organizational segments who are responsible for 13
- 14 various functions in program areas within the department. And
- those organizational segments through their chain of 15
- command, and through their process generate draft 16
- 17 regulations, draft orders those things. They come to us we
- process them for form and format content and we determine 18
- whether they conflict with other existing regulations and 19
- directives whether they make sense whether their common 20
- sense whether the average trooper on the street would 21
- understand them and that's really the work of the program 22
- division and that particular section of where Captain Ober was 23
- 24 assigned and was a Sergeant at the time they received the draft
- regulations they he would have assigned it to a project person

62

- whatever management was necessary between that project
- command for approval I think that probably summarizes it.
- O: Okay. Now during the time of when he performed those functions do you have a recollection of him
- ever coming to you with information that he felt should be passed on to the Commissioner to protect the Commissioner
- A: Well he would not have been in my chain of
 - command at that time?
 - like that?
- comings be personally brought to the Commissioners 18
- 19
- Did you ever have any conflicts with the front

- Well in an organization you always have
- differing always from time to time different opinions on how 2
- things are done occur. I take orders as every one takes orders
- and you know I always followed the orders that were given.
- Just to add to that I believe in senior management you have a
- responsibility to your commanders to share your concerns 6
- about how things are done and that's the function of command on how to things are done based on the input they receive.
- Once that decisions made it's your responsibility to follow the
- 10 order.
- 11 You remember the case called the Stackhouse 12 case?
 - Yes sir.

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- Was there any violations in that situation of the 14
- adjudicatory process? 15
- 16 A: I really don't know how that involved that case was not completed at the time that I left the Bureau and so my 17
- 18 knowledge on how that thing processed through adjudication 19 whatever occurred after that I don't know.
- Do you know whether that adjudication had any 20 information rather, which would indicate that that adjudication 21
 - I don't have any direct knowledge of that,
- Do you have any indirect knowledge? 24

in that case was directed or influenced?

25 A: No I really don't.



- Captain Brown came to you and he asked you my I
- 2 understanding is he asked you about Captain Ober how
- Captain Ober got information how and when he got 3
- information? 4
 - A:
- 0: How long have you known Captain Brown?
- I'm trying to go back, I've known him pretty
- long.

- 9 Q: What capacities has he served in the PSP if you
- can recall? 10
- I know he was a criminal investigator in Troop 11
- H. I known that he came to the Bureau of Responsibility in a 12
- 13 staff position I believe when he first came up there he was a
- Corporal. And made Sergeant and stayed, he made Lieutenant 14
- 15 and stayed in the Bureau and became a section commander.
- And of course now he's Captain and Division Director there. 16
- 17 That's what I have knowledge of that relates to his career.
- 18 O: In BPR.

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- A: Yes sir.
- 20 0: Do you know whether he has ever gone down to
- 21 RD to look at the history of a regulation?
- 22 A: I don't know.
- Did he ever tell you why you were read your 23 Q:
- rights in a case where open information was available to 24
- 25 anybody to look at what the investigation was about?

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- sort of like when we investigate subjects for alleged misconduct they have that union right. 2
 - Rìght.
- And it's almost like I said I said it like a joke,
- because my level in the organization and view of the conduct 5
- he was going to question me on why would I need that in my
- mind. But I said it because that's sometimes what people say.
- Because investigators are suppose to offer that as a right to
- members under the contract under members who are being
- interviewed and so if he was going to do that as a matter of a 10
- joke I said that to him. When I had asked him later he said and 11
- essentially I interpreted him I understood him to mean that 12
- that because I raised the issue asking for representation that I 13
- 14 must have something serious that on my mind that, I would
- ask for representation and he said that is why he gave me my 15
- rights. 16
- 17 0: And what did you tell him about Captain Ober's 18 coming in
- 10 A: Just that you know that he had wanted to know
- the origins of the change and I shared the content of that file with him essentially. 21
- Which you would had done with anybody in the 22 23 PSP from the bottom to the Commissioner is that fair to say?

20

- I asked him that question directly subsequent to
- 0: And what did he say?

the day he interviewed me.

- He said that he read me my rights as to the way I
- reacted to him telling me he was going to interview me as part
- of an investigation.
- O: Because you reacted?
 - A: Yes.
- O: How did you react?
- Well we had talked about Captain Brown came to
- my office and we visited in a social way for a few minutes. 11
- 12 Major I'm here on business. I said okay what's up. And he
- said I have to I think he might of said something like you may 13
- or may not be aware that Captain Ober has a suit filed and he 14
- has accessed information from the Historical files from RD
- and I have to find out how that occurred. And I said that's 16
- 17 easy.

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- Q: That's a no brainier right?
- 19 A: I said - I shared that information with him. And
- he was surprised and he said I have to interview you for my -20
- I don't recall exactly what he said if it was for my 21
- 22 investigation or have to interview you on the record, whatever
- you know I have to interview you. And I really said this
- almost jokingly should I call for representation. Because that's

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- Q: Because that is the nature of the file, and that is 1 the nature of the responsibility, and that's the nature of PSP
- custom practice and usage isn't that so?
 - A: Yes.
- O: So you were questioned and you were read your
- 6 rights how long did that interview last?
 - I honestly don't know.
- Did Captain Brown ask you any other questions
- aside from the questions about how Captain Ober looked at
- 10 the historical file?

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- A: I don't recall anything else,
- Did he ask to see the historical file? 12
 - I don't recall that he made that request of me. A٠
- You know whether he came in in doing his 14
- investigation and reviewed the historical file? 15
- I really don't' know specifically what he may or 16 17 may not have done in pursing that. He told me that he had
- interviewed other staff and would be interviewing others but 18
- that's all I know. 19
- 20 Q: He was interviewing staff over looking at the 21 historical file?
- 22 A: Yes sir.
- 23 Do you know who sent him? Q:
- 24 Do I know who sent Captain Brown? A:
 - Yeah who sent him down there on this mission.



No sir I don't. Correction I do he indicated to me that he was doing his investigation as an attorney work product, which is something IAD do routinely in civil suits. They gather information for Office of Chief Counsel for the purpose of defending the Department. And he did tell me that at the time. I had forgotten about that,

Q: So he in order to conduct a civil suit, he's reading your rights and asking you how Ober acquired knowledge of an open file that everybody can review and see? That's what he was there for?

A:

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Do you know what other members of the staff he 12 talked to? 13

14 A: I said to him you can verify everything I'm telling you everything with Process and Procedures with 15 Sergeant Margeson who's the Section Commander. 16

> Sergeant Margeson I think we had him in here. Yes. And he indicated that he had already spoken

19 to Sergeant Margeson. 20 Q: So he went to Sergeant Margeson before he came to

Correct.

23 Q; Did he ever check to see if that violated AR1.102 Subsection C. Just alittle joke Major. Probably a poor one at

69

- Now you wouldn't have been in BPR at that time 2 by virtue of rumor you don't' know that?
 - A: No.
- During the period of time that you served as the 5
- Director of the Bureau of Professional Responsibility do you
- know of any circumstances that somebody went out to a
- couple of the Majors of the PSP you go investigate somebody
- out there. Have you ever heard of that happening out there?
- A: No sir.
- 10 I had asked you at the beginning of the
- depositions some questions about some Administrative 11
- 12 Inquiry remember that?
 - A: Yes.
- Q: If I remember your response correctly it was that 14 I don't know it was a termed that's used but it doesn't have 15 any particularly definition. Is that fair to say? 16
 - A: Yes.
- 18 Have you ever known an investigation two
- 19 Majors or high-ranking officers - Captain or above reading
- people their rights and its call an administrative inquiry have 20
- you ever seen that animal before? 21
- 22 A: I've not personally seen that before.
- Now I have bumped into this term called supervisory 23
- inquiry can you tell us what that is?

- this stage. He indicated that he talked to Mr. Margeson, did he
- indicate that he talked to any other staff down there at RD?
- I don't think he mentioned anybody else at that time. We might had discussed who in the Bureau is involved
- in things procedurally who handles files and things like that.
- But I don't recall that he mentioned anyone else especially at
- that time.

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- 8 Sir do you know whether he interviewed Mr.
- Margeson before Mr. Margeson gave his deposition here in this office? 10
- A: I don't know. I didn't know Mr. Margeson or 11 Sergeant Margeson had been to be honest with you. 12
- Well sir I can tell you that he has. But you don't' 13 know if Mr. Brown interview Mr. Margeson before he was 14 here or after he was here?
 - А٠ No I don't
- We've had testimony that Mr. Wescott jumped in 17 an airplane and went up and talked to Mr. Williams I don't 18 know, Mr. Werts whatever and told him they were going to 19
- 20 conduct this investigation and or pointed them to do this
- investigation into Mr. Ober's whatever Mr. Ober did. Do you 21
- 22 know whether that was cleared with or reported to BPR before
- 23 Mr. Wescott did that?
- 24 A: No sir I don't

- Well it's a situation where allegations of behavior
- or conduct are made. They're of a minor nature their 2
- concerning activity that are properly addressed between a
- supervisor and their subordinate. They may represent a
- activity even if true there would not be discipline applied and
- it would be a conversation between supervisor and subordinate
- and you know just supervisory monitoring those types of
- things. But not a situation where it doesn't merit a formal
- investigation it would not merit a full investigation it would 9 not merit a disciplinary action those types of things. 10
- 11 Cause everything that happens in the PSP might be alittle bit out of order or what not can't rise to some level 12 justify a formal BR investigation? You'd never get done I 13
- 14 guess?

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- A: I would agree with that.
- 16 So a supervisory inquiry is a good and proper procedural device to maintain discipline and commend control 17 18 within the organization is that fair to say?
 - A: Yes
- 20 Knowing what a supervisory inquiry is and that we have given it some form here in the record and obviously 21 22 there's a lot of form on this record given to a BPR a full fledge official BPR investigation. What can you describe or help us what an administrative inquiry is what that means?

LYDE: It's 11:31 a.m. it's the end of tape 1 of 2 for Robert Dane Merryman. 2

LYDE 3 This is tape 2 of the deposition of Robert 4 Dane Merryman it is 11:49 a.m. February 25, 2002. Thank

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Very quickly process I had asked you some process questions about a BPR investigation you had corrected me I believe their isn't a recommendation done with a BPR investigation it is a fact gathering process?

> A: Correct

11 0: Can you explain the adjucdiatory side for me what 12 occurs?

13 Sure. The commanding officer of the individual who is the subject reviews the document makes a 14 determination whether he's going to sustain it unfounded or 15 not sustain it. I can clarify those determination by definition is 16 17 that would be helpful to you.

It would help.

A: Sustain of course you believe it happened the allegations are in fact did happen. Unfounded means your determination didn't absolutely didn't happen. And not sustained indicates that it couldn't be proven either way.

Now those are factual evaluations?

24 A: Yes.

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assume is to weed out that very type of thing. For example is it

a violation of it might be you know as you sit here. Is it a

violation of PSP regulation for a police officer to chew gum while writing a citation to somebody and giving it to them at a traffic stop? I mean do you know if it is? I don't think it is. I'm not aware of that, Lets assume that it's not. And you know I'm having a little fun with this because I had a federal judge one time tell me I was chewing gum in the courtroom, he was going to put me out of the courtroom. But I wasn't chewing 10 gum. I was innocent. Now if you lets assume the police 11 officers doing this and a citizen writes in and that reaches you, 12 its not just enough to say this is silly it might be. But the point 13 in fact is you're a processional and you look at that and say 14 15 well you know technically speaking you know this is not a good PR thing or something. But the officer isn't breaking any 16 17 regulation therefore we can't continue. That may be a normal process I guess any prosecutor, DA, anybody in evaluation process exercised that discretion. So its fair to say if a 19 situation comes to you and that situation isn't on its face a 20 violation of any department regulation or doesn't represent 21 egregious behavior or outrageous behavior of some type, your 23 going to look at that and say gez we can't go forward. Because jurisdictionally we don't have a reason or a bases to go

What do you do in a situation that yeah the facts occurred but nothings wrong how's that handled. Is that the adjudicators job? 3

Well you know. Let me make it easier for you. Darrell Ober was contacted by the FBI the FBI had indicated a certain kind of investigation whatever, Darrell Ober reported that information or shared that information with or however we want to describe it with Colonel Hickes. And Mr. Ober was told that you know just keep doing what he was doing or whatever he 11 was told by Mr. Hickes who I think it going to be in this 12 process anyway. And I don't think there's much of a disagreement on the facts that I know them. And I don't know 13 14 if any determination was made that Mr. Ober did anything wrong. I don't' know of any. Do you have a recollection of a 15 16 situation that okay and individual did what the individual did but that's not an error or violation of rules? Have you ever 18 bumped into the kind of situation?

Well if I had an allegation that came to me and I determined that if it were true it was not a violation of rules or law we wouldn't have investigated in the first place.

Q: As usual you're a step or two ahead of me.

To get to that point.

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24 So the fact is the evaluation process in BPR one of the reasons for the evaluation process in BPR I would

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I think you need to be aware you can't lose sight that we have a process for supervisory review in a situation not knowing all the facts in your scenario, and if the guys chewing bubble gum, and blowing bubbles in the face of the person he's talking to you might say that that's very unprofessional but it's not a violation of the regulation but it is something that the supervisor needs to have a talk with this guy.

That's an example, you did something that is a perfect example of what I mean. When you do that evaluation 10 process the officer says I have a cold alittle piece of dentine in 11 the back of my mouth. I wasn't cracken or popping gum I 12 wasn't being - or anything like that but I was quickly chewing 13 a piece of gum. Now a piece of bubble gum and blowing bubbles and cracken bubbles in the face of a person that's start 15 in to get to be offensive behavior maybe insulting or 16 demeaning behavior like that. It does depend on the 17 circumstances, but it's that what the evaluation process is for 18 when you have a Bureau BPR that suppose to serve the 19 20 purpose of saying hey you know this is the nature of the violation if any, if these facts are true, this is the violation, or 21 this maybe a violation isn't it what the process it for? 22 23

24 Now you had indicated at one point Major Williams and Major Werts is I remember correctly had made some

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forward if that fair to say?



- comments about we don't know yet if there's a violation but
- where looking and where looking at things, something like
- that. I don't' remember what your words were, I don't know if
- 4 I'm para-phrasing it correctly. Do you remember something
- 5 like that?

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- I don't' recall saying that to Mr. Brown. A:
- Do you have any recollection. I'm not trying to Q:
- trick you and I apologize here I don't want you to think that 8 9 about me
- 10 No I'm not concerned.
- 11 I remember early in the investigation in the
- 12 deposition and maybe it's something that passed through my
- mind subjectively. Was there any time when Mr. Williams or 13
- Mr. Werts had indicated that they didn't know whether there 14
- 15 was a violation I'd asked you some question about what you
- thought the interview was about. They didn't know what the 16
- 17 violation was or they didn't know if there was one, but they
- were checking. Something to that effect, do you remember 18
- anything like that? 19

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- I'm not sure how exactly I might had put it but 20 21 you know my perception then and now is that they there
- mission was to gather information about something. And to be 22
 - candid they weren't being extremely straightforward about
- what that might be.

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- and vague and based on what I was given I had a hard time answering the questions.
- 3 O: Were they on a fishing expedition?
 - Um. I don't know if they were or not. A:
- How are BPR files maintained? How are they 5
- 6 kepted and maintained?
- 7 A: I know how they are maintained when I left I
- don't know how they are maintained now. The short answer is 8
- that there are files that are maintained on sight with BPR and
- 10
- there by subject of individuals and any case involving that П
- individual is in that folder and I don't' know if they have the 12
 - retention schedule on those files at this point in time or not.
- 13 Q: Who can read a BPR file?
 - A: That's a very restricted access. It's pretty much I would characterize it as a need to know.
 - Does that include the Commissioner of the PSP? O:
- I don't' think there would be any restriction on 17 A:
- the Commissioner in reviewing a file. I wouldn't the 18
- Commissioner signs all the regulations so he has the authority 19
- to change a regulation. Do you understand what I'm saying? 20
 - BAILEY: Yes sir.
- 22 If the Commissioner says I want to read that 23 particular investigative report I wouldn't turn him down.
- 24 Have you ever known an investigation to be
- conducted by officers at in the PSP where they were out



- Did you ever get an impression during the interview that they were trying to find out what you knew if you knew anything? What you knew?
- A: I don't' know if they were or not. I can't speculate on that,
- Did it seem they were interested in finding out what was known by who about the FBI investigation as opposed to what Captain Ober had done wrong. Do you
- understand that question?

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- A: No. But I'd like you to rephrase it.
- 11 I'm asking a question that different then all the other questions I've asked you. I'm asking you if you had any 12 impression from Majors Williams and Werts if they appeared 13 to have an interest in the interview with you in finding out 14
- what was known about the FBI investigation as opposed to 15 16 looking at some alleged wrong on Mr. Obers part?
- 17 The whole way through that interview process all 18
- the questions were very generic, very theoretical, and you know in each instance when I would be asked a question I 19
- 20 would have to say your not giving the information that I need
- to respond to the questions that your asking. So whether or not 21
- 22 there was some intent to see if I had background knowledge I
- can't know that . I don't' know. I just know the questions
- presented in the way that they were were somewhat generic

- investigating and reading peoples rights then reporting to the
- front office to discuss the process of the investigation and the
- witnesses involved? Have you ever seen such a thing in the 3
- PSP? 4

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- 5 Not in my personal experience no. A:
- How many years you been in the PSP?
- A: I finished 27 in March.
- How many of those years were spent in BPR?
- 9 I was there twice, I would say accumulative I probably
- 10 have 2 2 1/2 years they're now.
- 11 O: Including a stint as Director?
- 12 A: Yes sir
- 13 O: Have you ever known in the PSP as a Captain to 14 serve in a Lieutenants position?
 - Well I'm aware that Captain Ober was. A:
- Aside from Captain Ober do you known of any 16 17 situation in the PSP in 27 years where a Captain was assigned
- to serve in a Lieutenants position? 18
- 19
 - A: No sir.
- 20 Sir you executed an affidavit do you remember
- 21 that in regards to AR1-1.02 Subsection C?
- 22 A:
- 23 0:-Do you know what was done with that affidavit?
- 24 A: No I don't.
 - Q: Do you know what it was used for?

- A: No I don't.
- Q: Do you know if it was used to make
- 3 representations to a Federal District Court Judge about the RD
- 4 process and anything to do with the RD process approval
- process of ARD1.102- C?

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- 6 A: I haven't discussed what was done with that
- 7 document with anybody.
- 8 Q: Did you compose it or was it composed for you?
- 9 A: I provided input to the document?
- 10 Q: But it wasn't prepared by you was it?
- 11 A: I didn't type it.
 - Q: No sir that's what I mean.
- 13 A: No
- 14 Q: Did you write it in long hand?
- 15 A: Probably portions of it.
- 16 Q: AR1.102 C is it a per capital distribution?
- 17 A: No.
- 18 Q: Other than the two times you were interviewed
- 19 one time generally were the issues you believe to be related to
- 20 Captain Ober and the second time by name they did. Have you
- 21 been interviewed or counseled or conferenced with regarding
- 22 Captain Ober any other times then those two times.
- 23 A: I don't believe so.
- Q: When Captain Brown let me make an offer to
- 25 you. One of the things in years I represent PSP I also have

81

- 1 recollection or any comments any behavior by anybody in the
- 2 front office or any investigators Williams- any if you recollect
- 3 an investigator or anybody in the front office or any superior
- 4 of Captain Ober's indicated that there was any thought be
- 5 given or maybe exploring your reaction. That maybe he
- 6 wasn't competent or not acting reasonably?
- 7 A: I recall only one comment that related to Captain
- 8 Ober's actions in this case . It didn't reflect on him or his
- 9 mental capacity but was an observation related to the actions
- 10 pursuing a suit of this nature.
- 11 Q: Okay. But there was nothing that was said to you
- 12 or nothing that was inferred or suggested to you by anyone at
- 13 anytime that would indicated there might be a desire to
- 14 investigate or look at or gather data to challenge Mr. Ober's
- 15 you know fitness for duty anything like that?
 - A: I don't recall that.
- 17 Q: That's good to hear. I don't think that I have
- 18 anymore. Do you ladies have anymore?
 - COUNSEL: I have a couple.
- 20 Q: Mr. Merryman you indicated that you at some
- 21 point showed Captain Ober the file with regard to AR1-1 is
- 22 that correct?

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- 23 A: Ye
- 24 Q: Now did you show that to Captain Ober in the
- ARD area or did you show that to him somewhere else?

- been involved in a number of lawsuits against PSP. One of the
- things that have concerned me over the years is are people
- 3 being sent for mental evaluations. Fitness for duty evaluations.
- 4 And where this is very shocking but the PSP evaluator says
- 5 they have a problem of some sort you know. When MR.
- Brown came into talk to you did he raised any fitness for duty
- 7 issues with you at all? I want you to think very carefully about
- 8 this because I have noted this as a pattern in the work I do. So
- 9 it's a question I try to ask all the time. Strike as to Mr. Brown.
 10 Where there any Officer, Superior of Captain Obers, Mr.
- 11 Brown, or colleagues of Mr. Ober was there ever any
- 12 suggestion made to you to discuss not you that indicated that
- 13 any consideration was being given to looking at Mr. Ober in a
- The Control was being given to looking at twit. Open in a
- 14 fitness for duty context. Like he was not behaving rationally or
- 15 reasonable or something of that sort?
- 16 A: I don't recall anything specifically suggesting that
- 17 he was not competent.
- 18 Q: Do you have a recollection of any comments or
- 19 suggestions that may have been exploratory in the sense that
- 20 they were feeling you out as to how you would react to a
- 21 challenge or interest in his competency? Let me tell you why I
- 22 ask that question. Every time I have bumped into a case where
- 23 somebody sues the state police its almost like the attitude of
- 24 you got to be nuts and you start looking at like something is
- 25 wrong with them. And I'm just asking if you have any

82

- A: Somewhere else
- Q: And where was that location?
- A: I took it in my car and met him at a school
- 4 parking lot, it's about a mile from headquarters.
- Q: And why did you go to the parking lot to show it
- 6 to him?

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- 7 A: I invited Captain Ober into the Bureau to take a look at
- 8 it and he indicated that he was uncomfortable with coming
- 9 into the building, and I agreed to meet him that way.
- 10 Q: Have you ever taken a file of RD of this nature
- 11 historical file outside of police headquarters before?
 - A: No.
- 13 Q: Did he tell you why he was uncomfortable going
- 14 into the Bureau to look at that file?
- 15 A: Just in a general sense that he felt it was a hostile
- 16 place for him to be and he just didn't' like coming into the
- 17 building.
- 18 Q: Did he tell you that he wanted to review the file
- 19 because he needed it for his pending litigation?
 - A: No.
- Q: Were you aware that he was utilizing the file for
- 22 his pending litigation when you showed it to him?
- 23 A: I didn't discuss his purpose
 - BAILEY: I'm going to object but you can respond.
- 25 COUNSEL: He already did respond.

- 1 BAILEY: I know but I'm objecting.
- 2 Q: When you presented the information to him in the
- 3 parking lot of Susquehanna school what was his reaction to
- 4 the file?
- 5 A: I think he was like amazed, or surprised of the
- 6 contents.
- 7 Q: Did he indicate to you any time that he believed
- 8 there was conspiracy with regard to him?
 - A: Yes he did.
- 10 Q: Okay. And what specifically was his language if
- 11 you recall with regard to that item?
- 12 A: That there was the language regarding the chain 13 of command that we talked about in that AR was placed in the
- 14 regulation to be used against him.
- 15 Q: And did he make any comments about any
- 16 individuals that were supposedly involved in this conspiracy?
- 17 A: I don't' know you know there's a lot of general
- 18 conversation but I really don't recall that he specifically
- 19 identified anyone.
- Q: And did you respond to him when he indicated that that one was specifically put in there for that purpose?
- 22 A: I told him I didn't agree.
- 23 Q: And do you recall your specific words?
- 24 A: I don't recall my specific words.

- A: I don't recall specifically, but it was the interview
 was taped. I really don't know.
- 3 BAILEY: You said the interview was taped?
- A: Yes.
- 5 Q: Now you indicated you were interviewed by
- 6 Majors' Williams and Werts as a part of this what we would
- 7 call an administrative inquiry do you recall that?
 - A: Yes.
- 9 Q: You recall testifying about that earlier in your 10 deposition?
- 11 A: Yes.
- 12 Q: If I were to tell you that you were interviewed
- 13 sometime after May 19, 1999 do you recall talking to Captain
- 14 Ober about the subjects that Majors' Williams and Werts
- 15 asked you in that interview prior to you being interviewed?
- 16 A: No
- 17 BAILEY: Joanna was that question if he talked to
- 18 Captain Ober about the matters raised in the interview prior to
- 19 the interview?
- 20 REYNOLDS: Right.
- 21 Q: Did you have any conversation with either well
- 22 did you have any conversations with Darrell Ober before you
- 23 gave this testimony today about this subject matter of his
- 24 lawsuit?

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A: No. I tried to stay away from that.

- 1 Q: And did he say after you told him that you didn't
- 2 agree with him did he have any reaction of that?
- A: Words to the effect if it were true it would be an
- 4 ugly thing.
- 5 Q: Did you have any further conversations about that
- 6 at all?

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- A: No.
- 8 Q: When the Director of IAD Rick Brown came
- 9 down to talk with you did he interview you about the attorney
- 10 work product?
- 11 A: Yes
- 12 Q: Did he tell you that he was investigating
- 13 allegations in Ober's lawsuit?
 - A: I think he just said to me he was trying to
- 15 determine how Ober had obtained access to the historical file.
- 16 To my knowledge that's what he said.
- 17 Q: Did he ask you any questions with regards to if
- 18 anyone had tampered with the file?
 - A: I don't recall if he did or not.
- 20 Q: So he didn't ask you in your recollection he asked
- 21 you nothing except questions about Ober's access to the file
- 22 he didn't ask you any other questions?
- 23 BAILEY: Objection. Objection to the form of the
- 24 question you may respond.

86

- Q: Did you have any conversations with either Mr.
- 2 Captain Ober or Mr. Bailey or an investigator with Mr. Bailey
- 3 with what you were going to testify to hear today?
 - A: No.
- 5 Q: I believe that you indicated that you were not
- 6 aware of any other investigations that were similar to the type
- 7 that was conducted by Williams and Werts with you career in
- 8 the state police?
- A: Righ

- 10 Q: You've never served as a Deputy Commissioner
- 11 or the Commissioner of the State Police have you?
 - A: No I have not.
- 13 Q: So if another Commissioner had ordered an
- 14 administrative investigation you wouldn't be in a position to
- 5 know about that would you?
- 16 A: That's correct.
- BAILEY: I'm going to object to the form of the
- 19 Q: Now you indicated that if someone was named as
 20 a target by the FBI that you wouldn't if that payers your series.
- 20 a target by the FBI that you wouldn't, if that person wasn't in
- 21 your chain of command that you would not report it to that
- 22 person. If someone was in your chain of command, however
- 23 lets say you as Director as BPR would you expect the Director
- 24 of IA to notify you of a pending investigation by the FBI



against a trooper unless you were specifically named as a target? 2 BAILEY: Objection to the form of the question. You 3 may respond. A: Well I want to be sure I understand. BAILEY: Can I respectfully ask I mean I know that 6 it's to him not to me, but I honestly don't understand can you rephrase it. Well I'll rephrase it. You indicated that the chain of command regulation basically put into effect what was an 10 understanding of the state police about how the chain of 11 command is followed? 12 13 BAILEY: Do you mean 1,102 subsection C. REYNOLDS: 14 Yes 15 Q: When you were the Director of BPR if the FBI 16 had come to someone in your chain of command about a 17 trooper who was being investigated by them. If they had come to the Director of IA or the Director of Systems Process and 18 told them about an investigation of this trooper would you had expected unless you were a target of that investigation by 20 them. If they had come to the Director of IA or the Director of 21 System Process and told them about an investigation about 22 23 this trooper would you had expected unless you were target of

have expected the Director of IA who got this information to report it to you? 3 A: Yes I would. That's all I have. BAILEY: You sir are to be commended for putting up with all these questions on such a sunny day. I would like to thank you very much for your cooperation and demeanor and I appreciate it as an attorney and I want to thank the Pennsylvania State Police for making you available today. 10 Thank you sir I don't have any thing further. 11 WITNESS: Yes sir. VIDEO OPERATOR: 12:18 p.m. the deposition of 12 13 Robert Dane Merman has concluded thank you. 14 15 16 17 18 19

89

that investigation unless you were the trooper or the target or

somehow or other the target of the investigation would you

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER

Plaintiff

CIVIL ACTION LAW 1: CV-01-0084

vs.,

(JUDGE CALDWELL)

PAUL EVANKO, MARK CAMPBELL, THOMAS COURY, JOSEPH WESTCOTT, HAWTHORNE CONLEY JOANNA REYNOLDS and SYNDI GUIDO JURY TRIAL DEMANDED

ORIGINAL

Proceedings:

Video Deposition Charles Skurkis

Date:

Defendants

March 5, 2002

APPEARANCES:

For the Plaintiff:

Donald Bailey, Esquire 4311 North 6th Street Harrisburg, PA 17110

For the Defendants:

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Joanna Reynolds Esquire 1800 Elmerton Avenue Harrisburg, PA 17110

truth, the whole truth so help you God. CAPTAIN, SKURKIS: I do. TONY MARCECA: And thank you. Mr. Bailey MR BAILEY: Yes TONY MARCECA: Could we have a sound check around the room please? MR BAILEY: Yep, yeah. First of all just make sure the record, Captain that's S-K-U-R-K-I-S right? CAPTAIN. SKURKIS: That's correct. MR BAILEY: Skurkis, Capt. Charles Skurkis. Okay, yeah my name's Don Bailey. I'm attorney for plaintiff Darrell G. Ober. Joanna if you and Barb could put your name and official address on the record and a phone number would help too. JOANNA REYNOLDS: My name is Joanna Reynolds. I'm an assistant counsel with the State Police. I represent the defendant in this action. My address is

BARBARA CHRISTI: Barbara Christi, Chief Counsel Pennsylvania State Police. My address and phone number are as given by assistant counsel Joanna Reynolds.

1800 Elmerton Avenue, Harrisburg PA, 17110 and my

phone number; my office phone number is 717-783-

MR BAILEY: Okay, Captain what we're going to

TONY MARCECA: Good afternoon ladies and gentlemen, its 1:15, 5 March 2002. Be advised the video and audio is in operation. My name is Tony Marceca. My address is 2219 Dixie Drive, Yo . Fennsylvania, 17402. I've been contracted by PR Video to be the video operator for this deposition. The case is the United States District Court, Middle District of Pennsylvania. It's caption C: 01 correction 00-0084. MR BAILEY: Yeah let's make sure, that's 1:CV-01-0084. TONY MARCECA: Thank you. 11 MR BAILEY: That's okay. 12 TONY MARCECA: This deposition is being held 13 at the law office of Mr. Don Bailey at 4311 N. 6th Street, 14 Harrisburg Pennsylvania, 17110. The video deposition is being taken on behalf of the plaintiff Mr. Darrell Ober. The witness name is Captain. Charles Skurkis. MR BAILEY: Ah, SKURKIS 18 TONY MARCECA: SKURKIS? 19 MR BAILEY: SKURKIS 20 TONY MARCECA: And the time now is 1:16. 21 And Captain would you please raise you're a right hand 22 and state your name. 23 CAPTAIN, SKURKIS: Charles Skurkis TONY MARCECA: And you do swear to tell the 25

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do here this is a video deposition. The videotape will be maintained here, although your counsel's already indicated that they're going to be getting a copy of it. Under the rules it has to be maintained here for you to come and look at it if you want to. That's up to you, and as I said they've indicated they're going to pursue a copy anyway. We will be making a transcript. We'll have a transcript made from the tape. During this deposition I'm gonna be asking you a series of questions and that sort of thing. Let me just give you a few pointers which I give to everyone in these kind of situations. If, make sure you get an opportunity to answer fully and completely. If some how perchance I interrupt you or you don't get a 13 chance to finish, make sure you either stop me or make sure that you get a more complete answer, okay? I won't be doing it on purpose, but you know maybe unintentional something these kind of things you get lost in thought or whatever happens. I don't know. Now also during the process from time to time there might be an objection raised by an attorney. Stop, the attorneys may have something to say. You go by the advice of your lawyers here. I assume the attorneys here will be representing you for purpose of this deposition. Counsel, I guess, are we okay with objections except those formal requests reserved the time of trail?

BARBARA CHRISTI: That's fine. MR BAILEY: That's acceptable. I can't think of much else. I don't think we'll be too long with you anyway. The last thing, if you don't understand a question make sure that you ask me to explain it. If you even for that matter, get curios about where I'm going with questions or why I'm asking questions. I like to develop a good rappore and maintain a good rappore of the witness so you feel free to answer in a relaxed way. We get a better fact record that way. So if I'm going somewhere with questions and you're even curios sometimes witness, you know, cause it's a tough position 12 to be in they'll be concerned or they'll want to know what your getting that sort of thing. I don't mind you asking me. I have no trick questions in mind. I have no interest in that kind of nonsense. Okay? I just want to try and learn what I can from you and that sort of thing. Do you 17 have any questions that you want to ask of me or that you can think of? 19 CAPTAIN. SKURKIS: Not at this time. 20 MR BAILEY: All right well, don't be afraid if 21 you do. If you need a break or something like that just tell your lawyers and your fine. Okay captain how are you employed and where do you work and what do you

do for I assume the Pennsylvania State Police. But tell

me what you do for them and where you work, where you're assigned, and that sort of thing real quick. CAPTAIN. SKURKIS: Currently I'm the Director of the Systems and Process, the new division Bureau of Professional Responsibility. Basically I oversee three inspection teams which travel to all the installations through out the state and inspect the facilities for compliance and regulation and department policy. QUESTION: And the other division within BPR is Internal Affairs, IAD it's called. ANSWER: That's correct. 11 QUESTION: So you got the two divisions and 12 you're heading up one division and they're both with in the Bureau of Professional Responsibility. Right? ANSWER: That's correct. OUESTION: And who's the head guy for 16 Professional Responsibility? Is that Major Conley? 17 ANSWER: Currently, it's 18 QUESTION: I'm sorry. 19 ANSWER: Currently it's Major John Pudliner. 20 QUESTION: Oh that's right. That's right. And 21 Mr. Conley you see he's been promoted. Right? ANSWER: That's correct. 23 QUESTION: I'm sorry, sir. 24 ANSWER: He's the Deputy of Administration 25

for the department.

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QUESTION: Okay so he's moved on from BPR there. He was at BPR before Mr. Pudliner. Right?

ANSWER: That's correct.

Question: Okay, now my research indicates that you've also served in IAD.

ANSWER: That's correct.

QUESTION: And you were an Administrative Sergeant, a Lieutenant. Section Commander, and as a Captain. Is that right?

ANSWER: That's correct.

QUESTION: Now when did you first find out about the investigation into Captain. Darrell Ober? You know what I mean by investigation into Captain Darrell Ober?

lawsuit that's been filled in this case?

the amended complaint have you had an opportunity to read it?

ANSWER: No I have not.

QUESTION: Do you want to just take a look at the caption? You can keep it

ANSWER: No I don't. QUESTION: You know, you're familiar with the ANSWER: Yes, I have been. QUESTION: This is a copy of the complaint,

QUESTION: Do you know what the lawsuit is about, at least generally? ANSWER: What I read in the newspaper. That's what I know and it has something to do with a treatment regarding a transfer. The impropriety of a transfer and some other ill treatment. ANSWER: Okay, now Captain Skurkis. How long have you known Darrell Ober? 10 ANSWER: I would estimate, I remember 11 knowing him as a Sgt. in Research and Development. So that was probably the end of the 80's beginning of the 13 90's. 14 QUESTION: Now did you become aware at some point that he had been approached or I guess a better word would be informed by the FBI about some sort of investigation that may have involved the State Police? ANSWER: Yes I am aware of that. OUESTION: When did you learn about that? 21 In other words, when did you learn that the FBI had approached or you know come to Captain. Ober. Who at the time, I'm sure we both know this anyway, who at the

time I believe was the Director of IAD.

ANSWER: I've seen, I notice two appear here.

I've seen the defendant's name.

ANSWER: Okay, I'm aware that I knew in June. It was probably earlier than June, about a month earlier than June of 1999.

QUESTION: All right now, is it fair to say that sometime in the fall of 1998 the FBI had come to Captain. Ober and indicated that they where doing some kind of investigation that might or might not implicate the State Police in some way?

ANSWER: I had heard that, but I don't know if that's factual.

QUESTION: What did you learn? What do you recollect learning in the spring of 1999?

ANSWER: That there was a question of Captain Ober having information and not properly passing it on to his superiors.

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QUESTION: Who did you learn that from?

ANSWER: It may have been Major Conley, probably Major Conley.

QUESTION: Do you remember what Major Conley said at the time?

ANSWER: No. There may have been several conversations regarding this over a period of time. I don't know what was said in what conversation. I know the issues where in my capacity as Director of IAD what I had felt, it had come upon myself to pass this

or a potential target?

ANSWER: I would have to consider what the information is other wise if it was information that a trooper stopped someone on the interstate and was verbally abusive. I would assume it wasn't my Major. Especially if it happened in Lackawanna County.

QUESTION: And what if it was your Major that stopped some body? What if the FBI came to you and said your Major was suspected of stopping some body on the highway and stealing money from them? You'd go tell the Major that the FBI was investigating him for that?

ANSWER: No

QUESTION: Well why wouldn't you do that?

ANSWER: Because there would be a question of whether or not investigatively would that be the proper time to let the subject of the investigation know the information you have.

QUESTION: And that's a matter not only of training, but I mean its common sense?

ANSWER: Correct.

QUESTION: And particular if it wasn't your investigation right? I mean if it's an outside agency that you respect like the FBI doing an investigation. You're going to respect the prerogatives of letting them conduct their investigation without interference. Am I correct?

information on to my Major. If the information was
 delivered to me. Whether or not I was aware of any
 regulation regarding the requirement to pass this
 information on.
 QUESTION: Okay, now you say, I may have

misunderstood your response. Were you saying this is
what you were thinking or is this what Major Conley
discussed with you? And I didn't make my question
clear. What you have just shared with me was that
something that you were thinking, questions that
occurred to you or where these things that Major Conley
had raised with you?

ANSWER: They were at the very least
questions I have in my mind. They were probably
predicated on on issues that Major Conley brought up. I
wasn't persuaded to exactly what had happened or how it
had happened. So if I had heard basically what you had
said now the first question in my mind would be well I
was in that position what would I do with the information
if I learned it from the FBI.

QUESTION: Right and you would have passed it on?

ANSWER: Yes I would have passed it on, sure.

ANSWER: Yes I would have passed it on, sure
QUESTION: Would you have investigated to
see if the person you were passing it on to were a target

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ANSWER: Well, I would question why did they
tell me if they didn't want me to do anything with it.
QUESTION: Would you second-guess why they
would tell you? Or would you wonder why they would
tell you? Know the difference?

ANSWER: Well I would probably ask them then why are sharing this with me.

QUESTION: Oh okay. And if they indicated that there may be any number people above you in the chain of command involved in a problem would you assume well I must not be a suspect, but there may be somebody up there who is.

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ANSWER: If the information that was passed on to me involved the possibility likely hood that someone in my chain of command was involved then I would have to evaluate the likely hood of that being possible. Now a lot of times people aren't familiar with the Hierarchy of the State Police and become confused or they think that our captains and majors drive around on the road stopping vechiles. So without having all the information there would be an evaluation process depending upon what information I receive.

MR BAILEY: Absolutely. And would you respond to that outside agency if it were the FBI out of blind loyalty or would you. You just told us that you

would use an evaluative process to do what's right. That would include if the information seemed justified not to compromise the investigation. That's your first duty. That's what you sort of told me. ANSWER: I think I covered that, yeah. QUESTION: Yes sir, absolutely. Now, at the time that you indicated that some time on or about June of 1998 you had heard something about Captain. Ober. I don't want to mischaracterize your words. I thought you'd indicated something that Mr. Conley, that's why I asked you this question about whether it was you 11 thinking or what Mr. Conley had thought about it or was saying. But that some time on or around June 1999 a 13 question on whether or not Mr. Ober had properly 14 handled information he received form the FBI. Is that a fair way to say it? If not tell me the way to say it. 16 ANSWER: The circumstances of Captain Ober 17 possibly not properly handling information. I don't know 18 if it was a question. 20

QUESTION: Can you stop right there? That's exactly what you said. I'm sorry I interrupted you. I remember now that is what you said about properly handling. What do you mean by that sir? Tell us Captain what in terms of responding to my question, what do you mean by that?

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consider that a third party.

QUESTION: I mean interns of a target? See if a potential wrong doer is a state policemen or member of the state police, my question is IAD might be a logical place for an outside investigative agency to contact.

Right?

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ANSWER: Correct.

QUESTION: So the issue then becomes with that out of the way. The issue then becomes; in this case it was Captain. Ober, whether or not he handled that information properly. Right? That's what you told us. Isn't it?

ANSWER: Correct

QUESTIONS: What do you remember were the questions about whether he handled it properly? I'd like to know what the facts were. Did he, how he could have mishandled it.

mishandled it.

ANSWER: What did he do with the information would be, that was the issue. Our regulation AR 4.25 basically dictates that a member regardless of their rank upon a receipt of a complaint of misconduct against an individual that's a member of the department, that they prepare a worksheet and forward it to the Director of the Bureau of Professional Responsibly.

QUESTION: Let's stop right there. This wasn't

ANSWER: By?

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QUESTION: Well properly handling
information. What do you mean? There must have been
surrounding facts or circumstances that cause you to
remember this in that context. There must have been a
question in other words of whether Captain. Ober
properly handled information. I'd like you to tell me what
you recollect about that

ANSWER: As a Director of the Internal Affairs

Division it is not outside the realm of possibility that you would receive information regarding complaints of misconduct against members of the department.

QUESTION: Yes sir exactly. You would be a logical place wouldn't it?

ANSWER: Well at some point. You're usually at the end of the series of notification, but you could be the first person contacted. That's possible.

QUESTION: But you are a logical person to contact in a circumstance where allegations might involve state police members himself or herself. Right?

As apposed to third parties outside the state police.

As apposed to third parties outside the state police.

ANSWER: I'm assuming the third party outside
the state police is that's the shoe into the state police. I
mean they're the one sharing the information. How does
that information get to the state police? Well I would

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about an internal complaint or a complaint form outside the agency about misconduct. Wasn't this about a criminal investigation being conducted by the Federal Bureau of Investigation?

ANSWER: I don't know.

QUESTION: So you're saying that rule, you're saying that, are you telling us that in your view rule 4.25 governed how Captain Ober should have handled the information form the FBI?

ANSWER: Not necessarily Captain Ober, but any member. What do they do with the information once they receive it?

QUESTION: And you're saying that Captain.

Ober should have open an IAD investigation on it?

ANSWER: I still don't know what the information is. There are cases where you receive information and it has nothing to do with a member of the state police. Then there is no activity.

QUESTION: No IAD action.

ANSWER: Right,

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QUSETION: But in this case you don't know? ANSWER: Exactly, I do not know.

QUESTION: Okay, so what I'm asking you then and I can understand that. What I'm asking you then is

what you recollect you might have heard that Captain

Ober may have done incorrectly? Let's use the word incorrectly. What did you hear at the time that you can recollect that Captain. Ober may have done incorrectly. Here's where I'm going. For example, did Major Conley, at that time it was Major Conley. Right? Did Major Connelly say to you, CPT Skurkis Ober did this and should have done that? Or COL. Coury thinks he did this and should have done that? Or the Commissioner thinks this or that? What was said? Do you remember? ANSWER: Nah, it was more of a, you have to 11 remember that I remember that I started with the Internal Affairs Division. When we started the Internal Affairs Division I was on the ground floor of that. I have the experience of, up to that point, fourteen years of dealing with complaints and procedures in headquarter. And his query was one of how would it expect to have 16 been handled if information was provided by an outside 17 police agency regarding member misconduct. 18 QUESTION: How are you defining member

misconduct?

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ANSWER: Well a member violation. Violating either rule or regulations of the department or a violation of Pennsylvania or Federal Law.

QUESTION: So Member misconduct you would include let's say a formal FBI investigation? Or for

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not gonna do that? ANSWER: No. No. QUESTION: Now what if the FBI come in and says higher ups might be involved in this? What would you do then? Do you think? ANSWER: Try to determine what they mean by higher ups. Like I said a lot of times people just don't understand our rank structure. Coming from the FBI I would say they would have a better understanding of it than John Q. Citizen does, but even so that's very loosely 10 defined higher ups. 11 12 QUESTION: Sure it is, but you know it's above 13 you don't you? ANSWER: To a trooper on the road a Corporal 14 is a higher up. So if they can equate they're talking to 15 me as a Captain and they're saying higher ups of mine or 16 someone higher in rank then I am. Then of course it 17 would be a superior of mine. 18 QUESTION: How many Majors in the state 19 20 police? ANSWER: I believe seven-teen. QUESTION: Not a huge number is it sir? ANSWER: No.

QUESTION: And you have a very small number

of Lieutenant Colonels. Right?

that matter a US Grand Jury investigation? ANSWER: If a member were an active participant in whatever's being investigated, yes? QUESTION: Well and if a member were a target? ANSWER: Again assuming if the FBI or another federal agency is conducting an investigation it would be a mater of a criminal violation. And yes if they where a target I would assume there is some level of allegation that this member was engaged in criminal conduct QUESTION: What if the potential targets or expressly stated targets where member of a group in the 13 Pennsylvania State Police? Can I give you a example of what I mean by that? So you know what I mean ANSWER: Please do. 16 QUESTION: Let's say that the FBI comes in 17 18 and says somebody. We have reason to believe that somebody involved in your Inspections Division of BPR might be connected with a, it was some criminal activity, 20 but we don't know who. We've got some information from 21 a CI and we don't know who. Would you call a meeting of the Inspections Division and say the FBI came in today, facetiously of course, the FBI came in today and one of your folks might be doing this? I mean obviously you're

ANSWER: That's correct. QUESTION: And the top guy or lady what ever the case might be or might be in history we don't know. That would be a Colonel? ANSWER: Commissioner yes. QUESTION: Commissioner, well commissioner's a Colonel. Right? But I mean they don't have higher, you know like a Generals or Lieutenant Generals and stuff like that. Right? ANSWER: No. QUESTION: So you're talking about a Colonel, one the only one Colonel in the state police? 12 13 ANSWER: That's correct. 14 QUESTION: A couple of Lt. Colonels. Right? And you have seven-teen Majors might be give or take one or two at some time. And then you remember Major, of course you got Captains, Lieutenants, and you know sort of like the military. But not completely, but I mean you have Corporals and Troopers and that sort of thing, Sergeants. Now, you only have one rank Lieutenant 70 21 right? 22 ANSWER: Yes. QUESTION: Not a first or second or anything 23

like that. Okay now how many Lieutenants you have?

ANSWER: A hundred thirty.

1	QUESTION: A hundred thirty?
2	ANSWER: Yes.
3	QUESTION: And Captain significantly less, but
4	
5	close to it. Right?
6	ANSWER: No.
7	QUESTION: Sixty, Seventy, Eighty? Maybe? If
8	you know.
9	ANSWER: I don't know.
10	QUESTION: I don't either. I confess. Okay but
11	anyway. But when you get to Major and above. You're
12	not talking about more then twenty-five people are you?
13	ANSWER: I would say not.
14	QUESTION: It's fall. It's 1998. Sometime on or
15	about early October of 1998. Late September early
16	October of 1998. Was Major Conley assigned to be the
17	head of BPR at that time? Sometime around there?
18	ANSWER: I believe his promotion and
19	assignment was in the early part of October of 1998.
20	QUESTION: Okay and where was he
21	previously?
22	ANSWER: He was a Troop Commander, Troop
23	B, Washington.
24	QUESTION: Jurisdictionally? Geographic
25	jurisdiction, what does Troop B cover?

1	QUESTION: Maybe northeast of Westmoreland				
2	and the contract of the contra				
3	***				
4					
5	ANSWER: I'm not certain.				
6	QUESTION: Well but it might.				
7	ANSWER: It might.				
8	QUESTION: Do you know where Indiana				
و	County is jurisdictionally? What troop it's in?				
10	ANSWER: I believe Troop A.				
11	QUESTION: Troop A, and where's Troop A				
12	headquartered?				
13	ANSWER: Greensburg				
14	QUESTION: And where is a Troop B is				
15	Washington.				
16	ANSWER: Correct				
7	QUESTION: And is Allegheny a different troop?				
8	ANSWER: I believe Allegheny is part of Troop				
9	B, but I'm not certain on that.				
O.	QUESTION: Well Now Anyway Captain. or				
i	Major Conley had come from you said Troop B you				
2	believe right?				
3	ANSWER: I believe its Troop B, yes.				
4 .	QUESTION: And he came in to be the Director				
5	of Bureau Professional Responsibility right?				

ANSWER: I don't know the exact counties, but it would be a section of South Western Pennsylvania. QUESTION: Well how far East would it come? ANSWER: I'm not sure. QUESTION: Do you know how far North it would go? ANSWER: You put me on the West Side of the Susquehanna River and I'm confused as to counties and bounties and excreta etc. QUESTION: That's okay. You don't know 10 where Westmoreland County, Mother Westmoreland County as I know it? ANSWER: Yes I do. QUESTION: Mother Westmoreland is just east 14 15 of Allegheny County right? 16 ANSWER: Right. QUESTION: And Allegheny County is a county 17 that's plum in the middle lies the city of Pittsburgh right? ANSWER: Right. QUESTION: And Washington County borders Allegheny County to the South and South West right? 21 ANSWER: I would probably guess. 22 QUESTION: You know where Indiana County 23 24 is? ANSWER: Somewhere North of there.

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ANSWER: Correct. QUESTION: Now have you ever learned what Ober supposedly did wrong if indeed he did anything wrong regarding that FBI investigation? ANSWER: At some point I learned that the information that he had received either was not shared or it was shared at a much later date with his superiors. QUESTION: Was he punished for that? ANSWER: Not that I'm aware of. QUESTION: Well if he did something wrong he should have been punished for it. Don't you think? I 11 would think he should be. ANSWER: Well a lot of people on our job do things wrong and they're not punished for it. It's not necessarily a case of... like I said... What do you mean by punishment? 16 17 QUESTION: I'm going to ask you that in a 18 minute. ANSWER: I know when someone says don't do that again. I don't consider that a punishment. I consider that direction and possibly counseling, but I wouldn't consider it a punishment. QUESTION: Okay that's fair enough I'm sure. Well if you're put in a penalty box what's penalty box? What's that?

ANSWER: My opinion of what they meant by
penalty box, I haven't heard it for years, but it use to be
an assignment to the academy. Basically you don't, you
have an office and a phone and you're given some type of
a project to work on. It could be something statistical,
review policy, something to that effect. But you're
basically without a staff and alienated to the point where
you're not interacting with other members of the
department.

QUESTION: Your sort of an administrator

QUESTION: Your sort of an administrator without a portfolio.

ANSWER: That's one way to put it.

QUESTION: Now do you have a recollection of Captain. Ober being transferred down to or an attempt at least being made transferring to Washington County? Cause you had mentioned that on an earlier question.

ANSWER: I don't know.

know, yes. Why? What prompted that?

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QUESTION: In response to an earlier question of mine I think you had... I may not remember correctly so it's your memory that counts okay? I thought you had made a reference to a transfer.

ANSWER: I did to transfer, but I don't know if it was Washington County. I thought it was to assist the Area Commander with his efforts in developing the plans for the National Governor's Association meeting up in

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ANSWER: You had asked I believed the question before that was, was I aware that he had been requested. No and then you said something.. QUESTION: That he didn't ANSWER: Did he request it. QUESTION: No. I'd indicate that he didn't want it. ANSWER: That he didn't want it, exactly. I don't know. 10 11 QUESTION: Did you hear anything about 12 it? 13 ANSWER: After the fact I believed I had. QUESTION: Tell me what you heard after 15 the fact? 16 ANSWER: This is maybe again predicated on I believed there was newspaper article challenging the 17 31 appropriateness of his transfer. QUESTION: Okay, well you know he 19 20 fought it right? 21 ANSWER: He what? 22 QUESTION: He fought it. You know that 23 he fought it in court? ANSWER: Yes. Yes. QUESTION: Cause you read a newspaper 25

I	State College.			
2	QUESTION: Who is that Area Commander?			
3	ANSWER: Major Szupinka.			
4	QUESTION: He needed help out there did he			
5	ANSWER: It was a large plan. I know it			
6	involved several Troop Commanders.			
7	QUESTION: If I told you we developed			
ģ	information which indicates that he didn't need help or			
9	didn't request help would that surprise you? Do you			
10	have any fact to support, give any knowledge of that?			
11	ANSWER: No I don't know either way.			
12	QUESTION: All right. Are you telling us that			
13	you had heard that Captain Ober was sent to help Mr.			
14	Szupinka?			
15	ANSWER: Yes			
16	QUESTION: And is it your			
17	understanding that Captain. Ober requested that			
8	opportunity to go and help Mr. Szupinka.			
9	ANSWER: No I don't know that he requested it			
0	QUESTION: Is it your understanding that			
1	he didn't request it?			
2	ANSWER: Yes. Well I don't know.			
3	QUESTION: Well you said yes sir. Now			
4	something popped up there. Something popped into the			
5	front of the that very fertile mind of yours and said you			

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article. ANSWER: Yes. QUESTION: And you know that the State Police defended their actions. Be it unsuccessfully, but they defended their actions right? BARBARA CHRISTI: Just for the record again because this keeps coming up. The State Police agreed not to transfer Captain. Ober. We successfully defended that action; in fact we won that action. It was dismissed on preliminary objections. Just so the witness, the attorney, everyone understands we agreed not to transfer him and there where certain stipulations that we're going to run into as a result of that. We did not lose that action. We successfully defended that action and in fact were granted a dismissal of that case. MR BAILEY: Is it your understanding that the 16 State Police in an act of grand and uncompromising generosity backed away from having Captain. Ober transferred to Washington. Is that your understanding? 19 CAPTAIN SKURKIS: My understanding is that the transfer was rescinded. I don't know if it was mandatory. I don't know if it was out of... 23 QUESTION: You don't know if they were encouraged to do so by any opinions or actions in

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the legalsphere.

ANSWER: Well I assumed based on QUESTION: Or there was an act of love. You don't know? ANSWER: No I don't know that. QUESTION: So it could have been an act of love and kindness? ANSWER: It could have been. QUESTION: Could have been. But in any event we do know that Captain. Ober did not go to Washington. Is that correct? ANSWER: I don't know if he went for a short 11 period of time. I don't know. I don't know. I know eventually the transfer was rescinded. I don't know if it 13 had already been effected and he was traveling and it dissipated. I don't know. QUESTION: Now Captain Ober, he had been 16 17 with IAD. Is that right? ANSWER: That's correct. 12 QUESTION: And at some point he was working 19 on an innovative technology project for the Pennsylvania State Police wasn't he? A information management kind 21 22 of system? ANSWER: Right he was detached to that 23 position. I don't know what exactly his assignment was. 24 25 QUESTION: Well did he...I'm sorry.

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you can hear it when... ANSWER: Well I might have heard all kinds of things. I don't know really. I don't subscribe to rumor to the point where it's in one ear and out the other. There has to be something more than that. So I don't know of his application for the LCE, but I do know ultimately that's where he was assigned. QUESTION: Do you know what he was assigned to do over...I'm sorry. Do you know what he was assigned to do over at LCE? 10 ANSWER: I believe there was a Lieutenant that was either under suspension at the time for misconduct, 12 and Captain. Ober was assigned to that division. My 13 guess is to take over the responsibilities of the Lieutenant. 15 QUESTION: Okay. Now um forgive because I 16 was asking those LCE question and I got mixed up in my 17 own mind about certain thing. You, you, different, one of those different questions forgive me. You know? You 19 replaced Captain. Ober at something right? As I rècollect. 21 ANSWER: Replaced him at something? 23 QUESTION: At some kind of duty or function? I can't remember off the top of my head what is was. ANSWER: Yes

ANSWER: He was assigned over to our Bureau of Technology Services. QUESTION: Well at some point he became disengaged from the IIMS Project right? ANSWER: Yes. QUESTION: And he was sent back to IAD as Mr. Evanko had promised him right? ANSWER: I know he was at... I don't remember. If he was it probably wasn't for a very long period of time. I don't remember. QUESTION: Okay. Do you have a recollection 12 of him requesting an opportunity to serve the Pennsylvania State Police in LCE? 13 ANSWER: No. QUESTION: Do you have a recollection of him being transferred or assigned to LCE? 17 ANSWER: Yes. QUESTION: And do you have a recollection of 18 what he was assigned to do with LCE? 19 ANSWER: To take a step back, you asked if I have a recollection of his requesting. Unless Captain. 21 Ober told me that he had requested it. I am not in that chain of command. I would be unaware of any request. That's not something that would be publicized. QUESTION: Well the people talk and you know

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QUESTION: Okay. What was that? ANSWER: In May of 1998, ah prior to May of 1998 I was Director of Internal Affairs. Captain Ober was the Director of the Systems and Process of Review BPR Division. In May of 1998 our Bureau Director reassigned CPT. Ober to Internal Affairs and myself to the Assistant and Process of BPR Division. So effectively we swapped iobs. QUESTION: Did you ever replace him at anything else? 11 ANSWER: No. QUESTIONS: Where you ever appointed to 13 PEMA? ANSWERS: Yes. QUESTIONS: Did you see him there? ANSWERS: Yes. QUESTIONS: Well how did you come to PEMA in place of Captain. Ober? ANSWER: I was approached I would say around May of 2000. By one of my subordinates 20 Corporal Marlin Leidig who was assigned to PEMA. And he encouraged me to apply for a vacancy at PEMA. I 22 explained to him that back when I first made captain then Joseph Blackburn who was the Director of the Bureau of Inspectorial Emergency Operations asked me

to go into PEMA and I turned it down then. I wasn't interested and I said I wasn't interested now to Leidig. And he said he enjoys working with me. He thinks I would find it interesting. He filled me in a little bit about the details of what the job encompasses which at that point I really wasn't aware of exactly what was being done over there. I told him I would think about it and the matter dropped for several weeks. And he approached me and said hey have you made a decision yet? Actually I told him my decision was no, and we discussed a little further. And he said look you can put 11 in if you don't like it. You can just get out. There's no strings attached it's free to go. I told him find out about what I would have to do to obtain the position. And he came back several days later and told me to do correspondence to the Director of the Bureau of 16 Emergency Inspection Operations and express and 17 interest in it along with some personal data. 18 OUESTION: Who was that? 19 ANSWER: That would have been, at the time 20 Major Leonard Washington. 21 QUESTION: Colonel or excuse me. Is Mr. 22 Wescott involved in that at all? 23 24 ANSWER: I don't believe so. 25 QUESTION: Do you ever talk with Mr. Wescott

shout it?

ANSWER: No.

ever talked with Mr. Wescott about it? ANSWER: No I don't. QUESTION: Well one of the problems with PEMA is that it causes you a lot of unreimbursable out of pocket expenses though. Doesn't it? ANSWER: There it taxes your getting your job done. Then you get paid don't you? QUESTION: But you get paid. If you get paid do you get any overtime pay for that or anything? ANSWER: In the event of an activation, depending on the duration of the activation there's a potential for overtime yes. QUESTION: How long have you been on PEMA? ANSWER: I believed I never received any type of correspondence as far as a starting date. But I got a phone call from Captain. Davis, who was the department Emergency Operations Officer sometime in June saying that I was selected, approved for. I don't what the term he used for PEMA. And would I be interested in going to a one day training exercise at PEMA, which was scheduled for the later part of that month.

QUESTION: Do you know if Mr. Washington

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Accompanying him to that training, and I said yes. QUESTION: All right. Well what do you... have you ever had gotten anytime in on PEMA that you were paid for? Anytime that you gave to it? ANSWER: Yes I did. QUESTION: Okay. How much for the year? You know let's say the first year we're there. How much money did PEMA put in their pocket? ANSWER: The first year I was there I had a total of four hours overtime. 10 QUESTION: Not much uh? 11 ANSWER: No. 12 OUESTIONS: Okay. What about since then? 13 14 ANSWER: Since September 11th I would estimate somewhere between thirty and forty hours of 15 overtime. 16 17 QUESTION: Okay. Is that largely due to the September 11th events? 18 19 ANSWER: Right. And I consider that very abnormal, QUESTION: Yeah I thought you would say... ANSWER: In fact I didn't appreciate the amount of time I had to spend over there. It wasn't worth it to me let's put I that way. QUESTION: Would you say that the kind of

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person that works for PEMA is somebody that's typically motivated or interested in that type of duty? That's a sacrifice to some extent? ANSWER: I believe it is a sacrifice. MR BAILEY: Hold on just one-second sir. QUESTION: Okay. In what ways is it a sacrifice? ANSWER: Well for one thing you're sharing a lot of your work time. Basically simulating additional work and not getting any extra pay for it. And when I say work I mean going to training, attending informational meetings, just being on call two weeks out of three weeks. I'm somewhat restricted as to where I can go and what I can do because I'm on an on call status with 15 PEMA. 16 QUESTION: So the on balance, assisting with PEMA on balance is a sacrifice that you do for the good of the State Police because you care about the organization which you're a part. Is that what you're telling us? I mean are you in effect saying that.... 21 ANSWER: In my case? QUESTION: Sure in your Case. Why do you do it? Do you do it because you care? Do you do it because you want the overtime? Do you do it for both reasons?

Obviously there's not much overtime. Why do you do it?

ANSWER: Well in my case, there's a concern for the department of course, but also I find that

interesting. I wanted to learn more about emergency

operations. And as a department, headquarters with a

department or headquarters assignment you don't get the

exposure to field activities that a Troop Commander, a

Captain of in the field would get. This is the closest thing

that I can personally experience without transferring into

a troop. As far as an operation field operation?

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QUESTION: Well its career enhancing in the sense that it's a good qualification and experience to have on your career resume. Isn't it? I mean it certainly has to be positive to some degree in that regard or does it hurt you?

ANSWER: I don't think.... I don't know that anyone would consider it further into your career saying well that person. We have two people here that are the same in all respects, except the person was assigned to PEMA. Let's choose that person. I don't think it's going to help there. Now possibly if you sought employment outside of the department. That's something on a resume would enhance your stature.

23 QUESTION: But you do it because you want to have the experience that it offers you. And because based 24 upon your knowledge and experiences with the

be something that you have enjoyed. And you find it to be something that has in fact been a learning experience

for purposes of your Pennsylvania State Police career.

Am I correct? Or am I wrong? I'm not trying to blow it out of...

ANSWER: I think you're wrong with that. I've never looked at it as a career enhancing. In fact I'll be frank, I don't expect to ever go beyond the rank of

Captain. That's not... I see people

QUESTION: You're not ambitious to go beyond the rank of Captain.

ANSWER: Well I see a lot of people that are ambitious ultimately do a disservice to the department.

QUESTION: Why?

ANSWER: Because their motivation is simply to take care of themselves. That's not my motivation everything I do...

QUESTION: Is that common with in the state 18 19 police?

20 ANSWER: Yes I would say it is common. 27

QUESTION: Why? Why Captain? Who's built that environment into the Pennsylvania State Police?

ANSWER: I don't know.

QUESTION: Had it been the leadership or has it been the troopers out there that did it?

Pennsylvania State Police it gives you an exposure to

things that you want to do. But you feel enhance your

opportunity to enjoy your employment experience. Now

that's what you've just described for me or am I

incorrect?

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ANSWER: I think what you're....

QUESTION: I'm looking for your reasons.

ANSWER: Look my reasons are I find it interesting.

QUESTION: Captain you originally started

telling me how reluctant you were to do this.

ANSWER: Right.

QUESTION: That you considered it a burden and that you had a friend and somebody who had 13

admired you and respected you. And I'm not over doing

it, but I mean. Said hey you'll be good at this and 15

apparently believed that you where need there or they

would have approached you and thought that you would 1È

be a good person for that job. And also thought that

once you were exposed to it you would like it. How long

20 have you been there?

21 ANSWER: It will be two years in June.

22 QUESTION: How many times have you asked

23 to quit, resign, or be transferred from it?

ANSWER: I have not been.

QUESTION: No. Because you have found it to

ANSWER: I think it's common sense. It's not the State Police. I don't know that the State Police is any

different in a comparative ratio then IBM.

QUESTION: Captain Skurkis is Evanko responsible for it at all?

ANSWER: Responsible for what?

QUESTION: Captain. Skurkis is it too much politics involved in the job in the State Police? Is that

what you are trying to tell us?

ANSWER: No just I have no aspiration to go 11

beyond the rank of Captain. 12 QUESTION: I don't mean you sir. I'm talking

about your observations about the State Police and what happens. Is there a problem internal in the Pennsylvania 14

State Police with too much political infighting?

16 ANSWER: As I began to say before, I personally do the things I do for the department strictly

for the bettering of the department. I'm not looking to

favor myself,

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QUESTION: I don't question that. I don't 21 question that sir.

ANSWER: Well that's what I was trying to say. 23 QUESTION: Did you pick it up from?

ANSWER: What I am saying is that I don't have motivation like whole lots of others may have. I'm gonna

do this cause I'm gonna be in a better light to get 2 promoted. QUESTION: Precisely and I believe you sir. And if I understand you correctly what that means is you seen people. You know by the way I'm gonna let you off the hook cause I'm not gonna ask you who. But you're

telling me and the fact that you have seen this kind of ambition within the State Police has perhaps done harm to the organization. That's what you seem to say to me.

Is that correct? ANSWERING: I'm saying that I don't know it if

has done harm. I'm saying though in my case that's not my motivation. QUESTION: It's not for you.

ANSWER: Right it is not for me.

QUESTION: It's not for you. And you did say and you did indicate however that there are problems in the State Police or have been with that type of thing?

ANSWER: No I'm saying that there are people in the State Police that probably would find a motivation for promotion to be a overriding career incentive.

QUESTION: Okay. And is it your view that people that put their duty and responsibility second. They set that aside and instead advance their personal interest. That that's a wrong thing to do?

information that you know about the investigation. Yes that's wrong.

QUESTION: Or even that the investigation exists, tipping them off.

ANSWER: Correct

QUESTION: Yes sir exactly right. I'm right with you. Okay. Now you've been with PEMA roughly two

years?

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ANSWER: Yes.

QUESTION: And in that two year period of time 10 if we were not going to include those maniacs on that 11 September 11th if that's excluded and that's out of the 12 way. Aside from that particular tragedy, you may be 13 talking less then ten hours of PEMA activity a year. You think or.. 15 16

ANSWERS: When you say ten hours you mean ten hours of ..

QUESTION: I really don't know that much about it to be honest with you.

ANSWER: Well a nah there's more. I would 21 say more like ... 22

QUESTION: Let's say on a given month. Is there an average on a month?

ANSWER: No it basically amounts to training and whether you want to avail yourself to that training.

ANSWER: Well some people can do it. It can be beneficial to both. But I find that I know in my case strict dedication to the job. No concern about am I gonna step on someone toes? Am I gonna say something wrong to someone? I'm not concerned about that. I'm gonna do my job and I'm doing it the best. I'll tell people if they're wrong if I feel they're wrong, and not worry that there's gonna be repercussions of hey you can't tell that Major that. Hey, if the Major's wrong I'm gonna tell the major I feel in my opinion that what he's doing is wrong 11 QUESTIONS: That's called candor right? 12 ANSWER: True. QUESTION: It's called being open and being 13 honest right? And that's what you meant when you had, ĭ4 in response to earlier questions, indicated that in a situation where somebody came to you and revealed the contents of an investigation. Where you said your duty and responsibility would be not to inform a target of an investigation. Because that might violate a law or that might compromise the integrity of an investigation. That's the same type of thing isn't it? The right thing to 21 do. Isn't it Capt. Skurkis? ANSWER: If you're saying that one has 23 knowledge that an individual is a target of investigation 24

and to intentionally go to that target and share

Those training meeting exercise at Three Mile Island tomorrow night. There's gonna be an exercise at Three Mile Island is in peril. Would you be available to go to training? If you chose to do that it would be an eighthour shift. That's eight hours right there. QUESTION: Of additional time? ANSWER: No. QUESTION: Is that additional or promised? Like a flex kind of thing. ANSWER: No. No. So in other words instead of my working in my office that day, seven to three, or 11 eighty to four. I'd be working at PEMA from three to one. So it would be eight hours away from my office, but not in any additional premium pay. QUESTION: Thank you. Okay. I under stood 15

16 that after you explained that. ANSWER: And as I said if you excluded

Sept. ANSWER: Mill as 1 and 1. Jon Control of the Getober 11th. In two years my overtime happened to be four hours.

QUESTION: Alright. So in a word it's not 20 21 required?

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ANSWER: What's not required? QUESTION: The training the different things. They're elective. In other word you can choose to go.

ANSWER: Yes. I don't know of anything that

says you must go to this or go to that. It's a question of
do you want to fool of yourself in the event something
happens and your totally out there with no direction at
all. I don't want to be in that position so I will go to the
training when it's available. I don't go to every training,
but I've probably gone to four exercises over this two-year
period so far.

QUESTION: Okay. Who makes the ultimate

QUESTION: Okay. Who makes the ultimate assignment to PEMA within the Pennsylvania State Police? I mean if PEMA is an outside state police organization right?

ANSWER: Right.

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QUESTION: Headed up by the Governor or somebody. But the point is that it's outside the Pennsylvania State Police. You'd be like a Pennsylvania State Police Participant or designee or something of that sort right?

ANSWER: The technical term is liaison.

QUESTION: Okay, liaison

ANSWER: From the Pennsylvania State Police to other representatives to PEMA.

QUESTION: I see. Who appoints to that position? Is it the Commissioner ultimately? Or who does that?

ANSWER: Actually I thought it was Captain

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QUESTION: Is a person as the object of a BPR investigation suppose to be informed when it's closed or done?

ANSWER: You mean the subject of the investigation? You said the..

QUESTION: Subject object yah whatever.

Subject that's a good word go ahead.

ANSWER: The subject of the investigation
upon adjudication is notified. The adjudication is not to
me an investigative step. You asked the question about
when is the investigation over. The investigation's over
when the report's done. There are additional

administrative steps that we take after that. Which

require outside of the room of the Internal Affairs

15 Division.

QUESTION: I understand. In other words there's an investigation, but let me then withdraw my question and come back with a different question. After the adjudication is a person suppose to be told?

ANSWER: The results of an adjudication should be communicated to the subject in the best case.

QUESTION: Is there any duty or obligation to inform a person. This might be a rather silly question. I assume most of this investigation are Internal Issue they

Davis and his Major the Director of the Bureau of

2 Emergency Inspection Operations.

QUESTION: But you don't know for sure?

ANSWER: No I don't.

QUESTION: Now normally in BPR, a BPR

6 number is assigned when an investigation arises right? I

7 mean whenever there's an investigation launched or what

s not.

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9 ANSWER: When a well... What by launched?
10 Knowingly it's just lined after a complaint worksheet is
11 prepared.

QUESTION: Okay.

ANSWER: It is not normally assigned until that worksheet is prepared, because that's the tracking

15 number.

QUESTION: Yes that's a worksheet. And when,
IT wanna just ask you a couple questions. I wanna keep
your investigation closed down. How does it close down?
What happens?

ANSWER: Closes down?

QUESTION: Yeah. When it closes down.

22 When it stops.

ANSWER: The investigation is terminated upon the last relevant interview and the preparation of the report.

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can interview a person so they're going to know anyway,

but is there any formal process of notifying. That

3 requires notifying a person that they're being investigated

or going to be investigated?

ANSWER: The regulations indicate that if an

6 individual is identified as the subject of an investigation.

7 That they are to be provided with a notification of inquiry.

8 That document basically tells the individual that an

9 investigation is being conducted, and it may touch on

areas of their conduct, which are subject to the inquiry.

Now the regulations say that shall be presented to the

2 subject as soon as possible. Normally it occurs at the

time of the interview. When the person shows up for the

4 interview after direction of the investigator. They're given

this piece of paper which is the Notification of Inquiry.

There it's laid out the fact that there's an investigation

being conducted and that whatever interview of their

participation or non-participation in this conduct is

19 what's being looked at.

QUESTION: And it has a number on it right? I mean, the number's a sign they put on there and they're given it right?

ANSWER: There's a provision for the number, but I know of cases where let's say a shooting happens in

the night. I'm going to respond as an investigator and

interview the participants. I don't have a number but I'm gonna give them that document telling them that this is why I'm talking to you and this is why we're speaking. So I would say no it's not an absolute. QUESTION: What position do you hold now? ANSWER: Corrector of System and Process Review Division. QUESTION: Do you know of any outstanding BPR's on Captain. Ober? As we sit here today? ANSWER: No I do not. 10 11 QUESTION: But you wouldn't necessary know 12 if there where one? ANSWER: That's no I wouldn't. You're correct? 13 QUESTION: Have you ever seen an 14 investigation into somebody in the Pennsylvania State 15 Police without a reason? Now this may be rather basic 16 to you so don't please don't rebel, in the sense that. You 17 18 know have you ever seen an investigation done just to get something on somebody without having a reason to do it? ANSWER: No. QUESTION: That's pretty basic to any investigator, to any member of a democratic society with a small bee. That's pretty much common sense. Well

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maybe it's not?

ANSWER: Well nah I'll say this. Being on

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designed to foster or tolerate abusive people, particularly members right. And that's one of the reasons BPR came into existence. As you told us. ANSWER: That's one of the reasons. QUESTION: Additionally there are probably three overriding reasons. The one that you had mentioned. The second is protection of the public. And the third is protection of the department. And the 8 protection of department is something that's frequently over looked, but I believed it spelled right in 425 that's Ιń it's to determine the process helps to determine the 11 performance inadequacies that occur at different levels 12 What I've in past and know again being partly an author 13 of 425. What is meant by that there are instances that may not raise to the level of misconduct. Yet the 15 department has invested interest in investigating it 16 QUESTION: Sure incident for example. 17 18 ANSWER: Pardon me? QUESTION: Incident for example. Let's say there... Well can I can I give you an example? There's been a discharge of a firearm. ANSWER: Right okay there again there nothing wrong but the person QUESTION: Well we don't know that.. ANSWER: You don't know that, but

board with BPR since day one I'd like to support the fact that that's why BPR was created. QUESTION: To prevent that kind of abuse right? ANSWER: Right QUESTION: And to provide a procedure so that members of the Pennsylvania State Police know that there is a policy and procedure that governs investigations into them and their rights as a member of the organization of Pennsylvania State Police right? That's what it's about. Isn't that correct. ANSWER: That's part of it. QUESTION: And the organization has been in existence I guess formally for...it's only been about ten 14 years or so? Maybe ten fifteen years? ANSWER: Ah 2002 would be the sixteenth 16 17 vear. QUESTION: It's not really that old. The 18 sixteenth okay. It's not really that old. Given the fact 19 that the agency was one of the first. And admittedly I'd 20 be the first one to doubt your reputation on the street 21 corner. One of the finest state departments of it's type 23 since what 1905? . : ANSWER: That correct. QUESTIONS: So it's not a place that is

QUESTION: But it's an incident. ANSWER: We are investigating it to look into the fact. Was this shooting legal? Was it in accordance with regulation? And then, of course, there's an overriding interest in gathering evidence at the time in the event that some civil action is taken later on. You what to get whatever is available and preserve that to whether it answers you defense or actually serves to prove that the shooting was in fact a proper and the victim was in the shooting. 11 QUESTION: Okay would you know how requested if indeed anybody did the investigation into 12 CPT. Ober? ANSWER: Do I ah... 14 15 QUESTION: Where did it oringinate? 16 ANSWER: No I've never seen. Normally that information would be a part of the complaint worksheet. 17 In the complaint block. I've never seen the worksheet so I don't know and nor have I have seen the investigation for that matter. So I don't the actual complaint is. Well I don't know that. There was an investigation done really. 21 There was. I don't know if it was IAD investigation? I 22 don't if it was a criminal investigation? I don't know if it was a supervisory type of investigation? I know something was looked at, but I don't know ultimately

exactly what. QUESTION: Were you ever interviewed in connection with CPT. Ober's, I know I still don't know 3 what to call it. After three or four months of depositions I don't know what to call it yet. Whatever it was. You have a recollection of discussing the investigation of Captain. Ober with anyone? Now for example go down the list of defendants very quickly if I may? Is it fair to say you probably never a... Have you the issue of Captain. Ober with Mr. Evanko? 11 ANSWER: No. QUESTION: Have you ever discussed Captain. 12 Ober with Mr. Wescott? 13 14 ANSWER: No. 15 QUESTION: How about Mr. Williams or Mr. Wertz? 17 ANSWER: Yes. 18 QUESTION: Tell me about it. ANSWER: Sometime of 1999 Major Williams 19 and Major Wertz were at the BPR offices here in 20 Harrisburg. I don't know what their agenda was. I don't 21 even know why they were there except they were in our 22 kitchen/ conference room reviewing reports. I believe 23 they may have been transcripts. In Fact that's what I 24 subsequently found out that they were there to look at

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ANSWER: Right. Correct. QUESTION: So that was the one incident, and there are one incident and where you pointed that out right? QUESTION: Where did regulations give the Commissioner power to initiate and direct investigations? I'd like to know that is. ANSWER: Direct investigations? QUESTION: Well I don't know what he's doing. You told me you told them. I want to know what that 10 means because let me tell you where I'm coming from. 11 I've looked till I'm blue in the face and I'm sort of an ideologue on issues like Constitutional Rights. I'm a 13 idealist on these kinds of things and I study them a lot, 14 probably more then most. I don't know where the 15 Commissioner gets this power that you mentioned 16 towards the Williams. And I'd like to know where it is. 17 And I'm not saying it isn't there I honestly don't know. 18 Can you tell me where it is? วก ANSWER: Actually I again I think I was somewhat instrumental in getting that authority to commissioner. It was Commissioner Cochran at the time. When we were developing. There was a special order anywise eighty-five.... QUESTION: Now what's a special order?

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transcripts. In any event, I had gone into the room to get a cup of coffee and Major Williams asked me a question regarding investigative procedure for IAD. Now again he was aware that I had been in IAD for fourteen years and that I would be familiar with it. Where as a I think he joked that his only involvement was in his addictions. And he really had never conducted any IAD investigations. I don't know how said what, I remember that my advise to them was that an investigation, an IAD investigation could be conducted into the circumstances of an incident. One member misconduct is involved. Or number two if the commissioner, well three I guess it was. If the commissioner directed IAD to look into something. Or number three if department directive dictated that IAD investigated certain circumstances. 15 QUESTION: Stop right there. If existing 16 regulations indicated that the IAD is to check into something I assume that IAD's gonna check into it if it's brought to their attention. Right? ANSWER; Again it depends on what is and 20 21 who brings it to their attention. 22 QUESTION: Okay but the fact is that if regulation provide that IAD either evaluates or initiate some action it's fair to assume you follow the regulations. Right?

ANSWER: A special order is a department directive, which provide guidance with regard to what action to be taken under certain circumstances. And what actions not to be taken under certain circumstances. QUESTION: Okay what's the number on this special order? ANSWER: It was I think it was 85111. QUESTION: 85111 okay now you say were... I mean how do you give the commissioner power? If I understood you correctly. How do you do that? ANSWER: Well we have meeting in the development of the Bureau of Professional Responsibility. We needed a document that gave us the authority. Basically the creation of the Bureau of the Professional Responsibility. It can't just appear from no where. So it was created by virtue of this special order. And I remember on of Colonel Cochran's concerns he was not a member of the state police prior to being appointed commissioner. He came form the FBI into the department. 21 QUESTION: Who a this is Commissioner 22 Cockren? ANSWER: Correct. What he found was there were a lot of issues. For example a lawsuit being filed

about conduct that members where involved in a year before two years or whatever the time limitations allowed. And that when he would go to find information regarding what had occurred there's no record. There's no investigation. None of this was ever looked at. QUESTION: Say what's that? Okay, ANSWER: I don't think that has to do... Well he was concerned that as Commissioner he should be aware of what's going the department. QUESTION: Absolutely. 10 ANSWER: And if he's not made aware of it. 11 Then it should be investigated and preserved in a report somewhere that in the event three years from now this 13 becomes an issue it can be retrieved and the information 14 has already been recorded. I would say that was the 15 major impetus for the creation of the Bureau 16 Professional Responsibility/ Internal Affairs Division: In 17 drafting this special order 18 QUESTION: Can we explore that for just a 20 momment? 21 ANSWER: Okay we're gonna lose. 22 QUESTION: All right then you go ahead. ANSWER: I think we've been cut in to four or 23 five times here. That I don't know. I'm not answering your questions from way back. 25

to him, and we did. In any event that was then. Today we have AR-4.25. QUESTION: Before we leave the Bud Dywer 3 thing we'll come back. Well ah we'll come back to that Bud Dywer thing. ANSWER: Well I'm giving that to you as that this thing hasn't been created overnight. This authority of the Commissioner. It was invested back then, but it is codified in AR-2.45 QUESTION: What do you mean it's an 10 authority of the commissioner? 11 ANSWER: Again, I'm not answering your 12 question. You keep changing the question. The 13 questions here where does this authority for the commissioner do this? I'm about to get there. 15 QUESTION: It's still the question 16 17 ANSWER: Okay QUESTION: Okay that's all I'm asking. 18 ANSWER: AR-4.25 I don't have copy with me and I don't know the section off hand, but it identifies 20 criteria under which an investigation would be conducted. And one of those issues I think it's the last very last thing. Is at upon request of the commissioner. QUESTION: Of who? ANSWER: Internal Affairs well it say. I believe

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QUESTION: Okay that's fair enough. You go ahead? ANSWER: With the creation of the Bureau Professional Responsibility there were circumstances outlined where an investigation must be conducted on member conduct. That is misconduct, violation of rules and regulations, and shooting in cities. There was also determined that there would be citations where the Commissioner would like to know the circumstances of what occurred even though it doesn't necessarily fall into the realm of those two perimeters. Meaning shooting incidents or misconduct. One example that comes to my mind was the suicide of Bud Dwyer. Commissioner Cochran called over and asked then myself and then Captain. Shaffer go down to the capitol and look into the events that occurred down there. And we did. And that would have been in my opinion under the authority granted by that special order, and to take it a step further AR-4.25 replaced a special order. QUESTION: What occurred in Bud Dwyers death that would cause the commissioner know what 21 22 happened? 23 ANSWER: I don't know. All I know is he directed us to go down there and make our presents know. Then look into what was going on and report back

that the caption's under an administrative investigation shall be conducted when, and then lists, ten or eleven items the last one of which is upon the request of the commisioner. QUESTION: So. ANSWER: So to me that's one of the accepted of the administrative investigation can be conducted even though on it's face there isn't or there isn't a shooting incident or an accidental death or there are a lot of other criteria, but 11 QUESTION: So if the commissioner wants to investigate, why Bud Dwyer killed him self over 12 something astensably Mr. Tornburn had supposively done he can look into it. He can say I want you guys to go check it out. Right? If that's what his reasoning is. ANSWER: Well I don't know what his 16 reasoning was. 38 QUESTION: Exactly sir. And that's why I 19 asked the question the way I did. Not to offend. ANSWER: But the regulations don't require 20 him to tell us what his reasoning was. 22 QUESTION: Thank you. ANSWER: But it gives him the authority to 23 request one.

QUESTION: He has the authority to do it if he

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wants too? Whether that thing gives him authority or not? Now what are you going to do if you don't think, if you're sitting their sir. Captain. Skurkis you're sitting there and let's say you don't think the commissioner has authority to ask you to go down and investigate the assignation of John F. Kennedy, but he tells you do did it. Now You're gonna do aren't yah? ANSWER: As an Internal Affairs investigation or as an investigator? QUESTION: I don't know sir. ANSWER: Well I'm not asking a Internal Affairs 11 investigator absent that caption in the regulation that says he's allowed to ask for one. I would say no. Then it would only be done on the cases of misconduct or department directory. QUESTION: Exactly ANSWER: That extra thing allows him to make

QUESTION: Well he doesn't have to come to. BARBARA CHRISTI: Excuse me could the witness just finish his answer cause I think... I don't

know maybe you were finished.

ANSWER: Well no I'm not. MR. BAILEY: I'm sorry

a request and that the process be

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ANSWER: I also believe that the ah...We

want to say. ANSWER: Yeah I do. Now let me give you an example of that. Of course if the commissioner, if this investigation would be in some way determined to an illegal investigation. In other words go wiretap, my wife is having an affair. I want you to go and follow this guy around. No. That would be excluded. I would say that it would mean coming upon him to show that somehow the department either is, that this has to impact somehow on the department, this investigation. In other words for the good or for the bad that there are some repercussions some event that has taken place or should have taken place that didn't and as a result ultimately is plenty impact upon the operation of department. QUESTION: Yes sir, absolutely. And what you

15 meant in the sort of a additional response you do just a 16 minute ago, we know what meant was, I assume, that the 17 commissioner can't come to you for example the 18 wiretapping example that you gave. The commissioner can't come to you and say hey Skurkis ah I don't have a 20 warrant or anything. I want you to do me a favor. Go wiretap my wife's phone cause I want to find out want 22 he's doing. I mean the bottom line there is in a ridiculous hypothetical, you would be. The request would be made or you to do something illegal or even

certainly when we incorporated the into the regulation we did not expect that so purifies investigations would be done. I mean if the commissioner requested it then he can use the resources of the Internal Affairs for a reason other then an obvious misconduct investigation or an obvious investigation that's required to be a Director. QUESTION: You done? ANSWER: Yes. QUESTION: What do you mean by that? I don't understand what you mean? Do you mean that if the commissioner wanted to come and ask to use Internal Affairs Division resources to investigate some on or something? He doesn't have to give you a reason. He can just ask you to do it and you'll do it. It that what you 15 mean? ANSWER: No. I think that would have to be some type of bases behind the request. 17 QUESTION: Sir I can't tell yah how I appreciate 18 that response, and I apologize to you because the times 19 that I have interrupted you I was trying to jump to that. I sort of thought that all that process that you were talking about was for that reason and I apologize to you for interrupting you.

QUESTION: Do you have something else you

ANSWER: You go ahead.

criminal and therefore it's improper, and you don't have to do that right? In fact you wouldn't do it. Absolutely Not! ANSWER: And I'll tell you that if you look in 4.25 the word is request. It doesn't say at the direction of. It says at the request of. That allows the Internal Affairs Division to evaluate the propriety of is this investigation in anyway germane to the operation of the department. Or is this at the personal pleasure of the commissioner or something else. Again it adds at that level of checks or balances there. That the commissioner can't just order you that he may request that the Internal Affairs Division initiate a new investigation. 13 QUESTION: Well at the time, I'm sorry where 15 you done? 16 ANSWER: And one time the fact what he does makes it more then just his decision. You know he may be the cabalist, but other superiors would have to be in agreement with conduction this investigation. I mean he's the Director of the Bureau Professional Responsibility. QUESTION: Okay so what your telling me then 22 Major Conley appointed Mr. Wertz and Mr. Willaims to be 23 investigated. ANSWER: Uh I don't know that.

QUESTION: Well you would assume that he did ANSWER: No not necessarily. QUESTION: Well then the commissioner appointed them? Could he appoint them? ANSWER: I don't know what appoint, assign is usually the term we don't ever appoint people to do an investigation, we assign them. QUESTION: I'm sorry sir. I'll use the use the 10 word assignment 11 ANSWER: And the assignment like in the case of a troop let's say the troop member does something 12 wrong. The troop commander may assign the 13 investigation. It would be at the concurrence of the Director of BPR, but the Director of BPR doesn't miss so 15 he assigned investigator. 16 QUESTION: So as you sit here today you're 17 assuming that Mr. Evanko concurred consulted and 18 there was a concurrence with Major Conley to appoint, 19 I'm sorry assign Mr. Wertz and Mr. Williams, the 20 investigators, In the Ober matter. Now you're assuming 21 22 ANSWER: No I'm not assuming that cause I don't know if the commissioner had anything to do with 24 it. I don't how the investigation started.

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been done the past? No I don't QUESTION: You don't know that it hasn't been done ANSWER: No I don't. Well I know that up until May of 98 I think I'm quite formulary with IAD operated and BPR. And during that ten years I don't know of any case where the commissioner or any deputies assigned investigators. Now the subject of the investigation has a ٠ , lot to do with whose being assigned. Normally it's at least an equal rank; well I shouldn't say that often is an equal 10 rank or a superior person being investigated. MR 11 BAILEY: Okay sir. Thank you. 12 MR BAILEY: Okay. Captain Skurkis, your 13 now running an investigation of the book? Is there any 14 such term? 15 ANSWER: Running it off the book? 16 17 MR BAILEY: Yeah. ANSWER: I don't know ... 18 QUESTION: Well you have made reference to 19 the possibility, at least at a relatively low level, that there can be some type of investigation. I hesitate to use that 21 word, maybe inquiry or something. Let's say a Field 22 Commander of a situation that won't necessarily, and 23 remember I've used the word launched and you had corrected me, launched or started or initiated a BPR

QUESTION: I know. Sir, I realize that, bare with me. ANSWER: We've taken quantum leaps here, that apparently things you're saying, I don't really know that to be a fact. QUESTION: I'm not amnesia? You're child of BPR. You're a lot of years of experience with BPR and you're a fact witness here. I'm asking you those question. I'm not assuming you know the answers to those things. I happen to maybe know some things that 11 maybe you don't hear. ANSWER: I guess you do? 12 QUESTION: Well okay, in fairness to me now. 13 14 The reason I'm asking the question to learn from somebody who has more expertise then I do about BRP and how it functions ANSWER: And that's fine. 18 QUESTION: The assignment, you don't know how Mr. Williams and how Mr. Wertz came to be 19 assigned. ANSWER: No I do not. 21 QUESTION: Now could Colonel Coury assign 22 them to investigate Captain Ober without the concurrence of BPR?

ANSWER: It's possible. Do I know that is ever

investigation? I've used the term full investigation, and you had corrected me. You'd come in with a concept of adjudication and that sort of thing. You know, it's educating me to this process this is one of my questions. I may not be exactly perfect. What I want to ask you about now are questions about the process. And what happens from an initial inquiry stage to where an investigation becomes fully involved? I guess that's the best way I know how to describe it. Okay. Let's say that there is a, probably on a daily basis, commanders look into and evaluate things that sometimes include what people in their command do. Is that fair to say it's a normal part of running a large organization? 14 ANSWER: Yes. QUESTION: Okay. At some point in response £ 16 to questions I' asked you've made reference to having a reason. You know, for want of a better description, I don't know how else to say this, to actually launching or getting involved in, or initiating a full blown inquiry or 19 investigation; that there should be a reason for that. 21 ANSWER: Sure. QUESTION: I mean that goes without saying. 23 That's common sense. And that one of the reasons that BPR was created was to prevent abuse in situations where there wasn't a good reason, to investigate someone



activities. That sort of thing, but that was one of reasons that BPR got started to create a process, a predictable process.

ANSWER: Correct.

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QUESTION: Okay. Now aside from the investigation do you know of any other....Strike that because I don't think in fairness to you. Did you at some time since the fall of 1998 and the spring of 1999, have you at some time learned that it was the commissioner who requested that Captain Ober be investigated?

ANSWER: Since then I had heard that. Let me put it that way. I don't know. You know again I'm a

put it that way. I don't know. You know again I'm a person of evidence. I want to see the document. I want to read what the report says. I don't want to hear it, because what you hear and what become fact are two different things.

QUESTION: I sure agree with you.

ANSWER: I don't know that to be certain because I haven't seen any documentation on it, but that's what I had heard. Yes.

QUESTION: The reason I asked you that question is that you had related an experience where you went into the conference room kitchen on an occasion where Mr. Williams and Mr. Werts were reviewing transcripts. Do you remember your response?

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thinking, when you raised that issue was that you had
also made reference at one point to use the word request,
the role of the word request from the commissioner.
Remember? And you used that actually a little later on
after I had interrupted you right? And is what you meant
by request is that the commissioner cannot direct? The
commissioner can only request BPR to investigate
something.

ANSWER: I view request as being less of a concrete term. Direct means this is the ways it's going to be. You're going to do this. A request is something, is something that you ask and then I think it usually is accompanied by reasons for the request. Direction means I just tell you; you don't need a reason. Request means that I would like you to do this because.

QUESTION: Agreed. Now can the

QUESTION: Agreed. Now can the commissioner direct BPR to investigate something? Order them? You will investigate this.

ANSWER: If it's misconduct, yes. If there's a situation of misconduct or perceived misconduct, yes. But that's invested in the regulation 4-25. You going do it either way.

QUESTION: But 4-25 does not permit you to go on a fishing expedition. If I remember 4-25, engendered in the regulation is an assumption that there ANSWER: Yes

QUESTION: And there was an inquiry about
you, a general a generic inquiry of you, about procedures
of BPR tech?
ANSWER: Well I don't know what was asked of

me. I don't know if it even had anything to do with my
 response, but that is what I remember saying and I
 believe that was one part we got cut off. The other part of

9 my direction to them was that whichever avenue is

expressed, if it's done as an Internal Affairs investigation

then that you are to utilize the documentation that Internal Affairs has incorporated in to 4-.25, in other

words administrative rights, notification inquiry, as well

14 as the format of investigation. If you do not do it as an

Internal Affairs investigation then you do not use the documents that are in 4-25. Don't mix apples with

oranges was my direction to them.

QUESTION: Now you had mentioned an issue
there about where we had got cut off. What you are
referring to is that I had interrupted you at that point
right?

ANSWER: I never finished that statement, for whatever. I can't remember why.

QUESTION: With my bad manners I'm now returning to it, my apologies. At the time, when I was

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is stated ground for the investigation.

ANSWER: Well no those are my words. In other words, those are my words behind what, when 425 was written, what was expected, but that's not what's in the regulation. The regulation says at the request of And I would fall back on my expectations, or our expectations at the time we wrote that is that the commissioner would have to in some way, have to believe whatever's being investigated is really related to the department, will impact it you know, even from the standpoint he used the word witch hunt. Let's say a gun comes up missing 12 out of the station. We don't know why it's missing. We don't know if the cleaning lady took it. We certainly can't say that one of the members stole it. We don't know that. So there may be an investigation conducted and when you're done with the interviewing of every member 17 on that station trying to find out what his or her involvement may have been, people at the station would probably say he's conducting a witch hunt. They're trying 19 to pin this on somebody here. Well as commissioner, I'd be saying I've got to find out what's going on at that 21

station. Why is this gun missing? So it's an

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investigation that's being conducted, but some people

may view it as a witch hunt. And I view it as managerial

response to an activity that in someway shape or form I

may have to account for later. IE that that gun is used in a homicide, and traced back to the State Police. In one respect there is a very fine line there between categorizing an investigation as a witch hunt verses a total review of the circumstances. So I fall back on what is the relationship of this investigation to the department? If there's a relationship there and the commissioner wants it done, if he can show that relationship, I'd be hard pressed as a captain or a major in BPR to say we're not doing it. 10

QUESTION: Can you envision a circumstance where you'd say we're not doing it?

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ANSWER: The example I gave was if someone said I believe my wife's having an affair. I'd like you to follow so and so around. I'm not going do it sir.

QUESTION: Do you know of any actual circumstance where a commissioner come down and asked BPR or made a request to BPR to do something that was superfluous not any interest of the bureau or was politically motivated let's say?

ANSWER: So far I think we've been blessed with commissioners that have been above board and that go by the book.

QUESTION: And if a commissioner comes in here and doesn't have a good reason for doing something then that might change your mind

ANSWER: Yes, if he doesn't have the reason.

OUESTION: If he doesn't have the reason you

might change your mind. Now, I had also asked you

some questions and you had indicated that there were

circumstances where a commissioner would make a

request, and I'm not really clear on it, that there would

need for BPR to concur in that decision before the

accrual process of investigation began. Let me tell you

where I'm coming from to explain what I mean by that

end part. It is my understand, in this situation, that

indeed some investigators were assigned by the 12

Pennsylvania State Police without any kind of; this is my

understanding it doesn't make me right. I don't want you

to; I want you to understand that in my making this offer

to you I'm reflecting what I can best remember. And I'll

ask you a question based on that, but don't assume that

I'm correct in my assumptions. I'll just tell you what I

have come to believe and understand. It is my, Don

Bailey's understanding I'm not testifying here. These are

not documents in front of you as blurted out, not very 21

appropriately referred to earlier, you know with being the

23 best situation. I can just give you what I remember. My

understanding is that investigators at the request of the

commissioner, deputies, or close assistants of his had

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went and appointed investigators. That's my

understanding. You used the word assigned. I don't

know if I agree with that term. My understanding is that

they were just told to do this. I may be wrong. It is my

understanding, based on the facts that I know, there was

no consulting with rules, regulations of BPR, no asking of

BPR of anything, no request or permission from BPR to

do anything. Okay, and I'm not saying that BPR or the

Director of BPR would be in a position to tell the

commissioner no. I don't know the answer to that. From 10

a political point of view I have a tendency to think that 11

that would take an awful lot of courage in a real

13 repugnant situation. I can't even imagine it arising. I

can't, but I don't know of any; I know of no facts we 14

haven't interviewed Major Conley yet and we're going to 15

see what he has to say. Although I think I know the 16

17 answers. We'll see, but I don't know of any going

through what I would refer to normally as the proper 18

correct channels. Okay, that I know of, I'm not saying 19

what the commissioner did was wrong. I just don't know 20

of any. My understanding is these guys started 21

investigating at the direction of his deputies. At some 22

point, to my understanding, yes it comes to the attention 23

of BPR. I'm talking about as a bureaucracy. It comes to

it's attention. My question would be as follows. If I am

correct about that, this thing took a direction, that it

started, that it's under way, this investigation, and then

organizationally; Sir I was using BPR, I should be saying

IAD okay. So I'm at fault there. I didn't mean BPR. I

meant the attention of IAD. I don't know whether

something can initiate at, you know here's BPR. I view

them as the top and then view organizationally on an

organizational sheet. I view IAD and I view your division.

Now at some point it comes to the attention of IAD after

it's started. My understanding from your testimony and

the others testimony is that might not mean much of

anything, because there may be an initial inquiry stage

or evaluation stage where something is looked at. When

it's final, maybe it takes on a form that there is a

suspicion you know a mere suspicion of that kind of 15

thing then it becomes more formal. Okay at some point

it takes on a bureaucratic form and it gets and it starts to

tracks and all that sort of stuff. Is that correct? Is that

the way things could get started? Is it possible that these

deputies can go and assign a couple of majors to

investigate Captain Ober and they learn something and

say - He maybe did this and then it gets a

bureaucratically assigned number, but something like 23

that happen? Can you envision that?

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ANSWER: Yes. It happens quite often on the

lower levels. That there is a cursory inquiry conducted to some allegation. At some point it's determined..... Let me give an example. Someone calls into the troop commander and says one of your cars ran me off the road responding to an incident. The commander contacts a corporal. This Corporal is looking at us. The Corporal looks into it and finds out it was not a state police car, but it was an East Pennsboro Police car. That's the end of it. We're not going any further now. This is not a State Police issue. Maybe we'll forward the information to East Pennsboro. Refer it I don't know, but as far as IAD goes that's over. At the same time the Corporal may find out there was a robbery taking place and the State Police send in nine cars. Yes, it's likely that one of our cars ran this poor elderly lady off the road. We're going to do an Internal Affairs investigation 16 to determine who did, who was driving the car, which car was it? So circumstances could be looked at in a preliminary determination as to whether the Internal Affairs process should become involved. 20 QUESTION: So you expect that some point 21 22 before this became a formal investigation, a more formal investigation, that there's some hiatus event or cursory 23 review, yielded information which would indicate that a

further or full investigation was justified. Before you

ANSWER: Correct.

QUESTION: Do you know if that happened in Captain Ober's case? ANSWER: No I do not. QUESTION: You don't know if it's ever been adjudicated? ANSWER: No. I'm not certain of that. I don't know that. I know something was done because I know interviews were conducted, but I don't know in what 10 shape or form that ultimately was documented. OUESTION: Or if it was. 11 ANSWER: Well I'm assuming because there 12 were interviews. At least there were transcript or tapes. 13 That record I'm sure exists, but I don't know what 15 beyond that. OUESTION: Who would have this? 16 ANSWER: The investigators. 17 QUESTION: Who is the adjudicator? If there 18 was any adjudicator on Captain Ober. Do you know? ANSWER: It depends on where he was 20 assigned at the time that the investigation was 21 completed. It would be his commanding officer. So whoever his commanding officer was. 23 QUESTION: Koselnak? He's in LCE I guess 25 he...

assign the number and go through with it. ANSWER: Well there could similarly be circumstances where this Corporal doesn't know which way to go. QUESTION: Doesn't know which way to go? ANSWER: Doesn't have the resources. Doesn't have the time and it's decided hey we got to be on the safe side and it's investigated. Contact Internal Affairs get a number, do a worksheet, and have an investigation conducted. QUESTIONS: Could you hold at that one point? I think we need; All right let me see if I can finish this one. Okay let's say there's a number's assigned that. 13 There's some kind of intervening information or additional information or information has developed sufficient to make this a situation where okay we need to investigate and go forward. And it's a formal IAD or BPR investigation. I know so let's say it's a BPR. Once that process is completed, as I understand it, there's a report written that is essentially is a factual summary. Am I correct? It doesn't make recommendations on what to do or anything like that. It's a factual summary. ANSWER: That's correct. QUESTION: Okay. Then it goes to adjudication, what you referred to as adjudication.

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ANSWER: Okay LCE. Then would he have been in the bureau? QUESTION: I guess. ANSWER: Well if he was there. QUESTION: Major Wall, IMMS ANSWER: Okay if he was assigned there then he was assigned to Technology Services. The Bureau of Technology Services. The Bureau Director is Major Wall. He would responsible for Technology QUESTION: And if it wasn't him, and he's assigned to LCE then it's going to be Mr. Koselnak. ANSWER: If Major Koselnak was the Bureau 12 Director at the time. There's a different Bureau Director at the time 14 QUESTION: Would it be anybody above that? ANSWER: As a Captain assigned to a Bureau it 16 should be the Bureau Director that makes the adjudication. I don't know of any circumstances where that's been other than that. 19 QUESTION: Once they do the adjudication 20 what do they do then? Let me take that back. What if the facts don't suggest the person did anything wrong? 23 ANSWER: Well if the person had been provided with a notification of inquiry in writing. That

spells out an issue. That issue should be communicated



to them where it's adjudicated as to... I don't know what it said, but addressing whatever the notification of inquiry said.

MR BAILEY: You know what. I'm going to try and pack this in to this two hour tape if I can. Can we suspend?

MR. MARCECA: Yes we can. It's 3:04. We're now going to suspend the deposition.

MR. MARCECA: It's 3:08. We're back on 10 camera and deposition.

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MR BAILEY: Is that one on down below? MR. MARCECA: Yes sir.

MR BAILEY: All right. Captain Skurkis I'd like 13 to thank you very much for you coming here today. I very much appreciate you cooperation. I have no further 15 questions for you. I again apologize sometimes it's hard. 16 Your answers are very involved and technical. I think I 17 interrupted you a couple times. I apologize for that. I 18 think we were able to get back to them though. Is there anything you'd like to add or any questions I asked that 20 you'd like explained. If not we're done.

A: In response to one of your comments. You drew this scenario about you thought is was, what was 23 the term you used. You believed it's next to impossible 24 that if the commissioner came to someone and asked

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loyalty they would tell him. I disagree with that. Most of the members that have testified here I think would have disagreed with that. I have not asked you that question. I don't intend to. I don't see any reason to. I don't think it's relevant, but you're not a defendant here. For what it's worth I have had a response like that which sort of shocked me. I maybe didn't hear it right, and maybe the

MR BAILEY: I, we're on the straight and narrow. We're reading from the same page. Again I'd like to thank you for being here. And I'd like to thank you very much for your courteous responses. Any questions before we go?



them to do an investigation that they wouldn't go ahead and do it. I know how you used the term there. Anyway, what I would like to say is you're looking at it from that kind of standpoint. From my standpoint I can... I think what you said was unfathomable. That they would not

MR BAILEY: If there was a reason for it. I mean a good reason for it.

A: Oh okay

go ahead with the investigation.

MR. BAILEY: I did not mean to imply if I 10 implied that someone would say to the commissioner, you know, like go into some detailed question or question the commissioner in a case where let's say that the commissioner came with a totally frivolous request. Now I have difficulty envisioning a situation where most of the State Police members I've talked to if a commissioner came with a outlandishly frivolous or an irrelevant kind of a personal request let's say that was obvious. One of the examples you raised I think was an improper wiretapping situation. Now I assume that most of you would say oh no I'm not going to do that. Although we

have had testimony here where some of the staff members have indicated that if they knew that the commissioner himself was target of an investigation I

believed that they indicated that they said yes out of

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